"A constructive amendment to a [complaint] occurs when either the government (usually during its presentation of evidence and/or its argument), the court (usually through its instructions to the jury), or both, broadens the possible bases for conviction beyond those [listed in the complaint]." Commonwealth v. Garcia, 95 Mass. App. Ct. 1, 4 (2019), quoting Commonwealth v. Bynoe, 49 Mass. App. Ct. 687, 691-692 (2000). Amendments to the form, rather than the substance, of a complaint are allowed as long as they do not prejudice the defendant. Commonwealth v. Knight, 437 Mass. 487, 491 (2002). "Matters of form are those that are 'not essential to the description of the crime charged.'" Id. at 492, quoting Commonwealth v. Snow, 269 Mass. 598, 606 (1930).

Here, the defendant claims that the trooper's opinion testimony that the defendant "was under the influence of alcohol and marijuana" constructively amended the OUI intoxicating liquor charge to OUI intoxicating liquor and marijuana (Tr. I:32; D.Br. 16). This argument is based on a misunderstanding of the OUI statute. "[T]he mixture of alcohol with another substance is not a separate theory of culpability."

Commonwealth v. Bishop, 78 Mass. App. Ct. 70, 73 (2010), quoting Commonwealth v. Lampron, 65 Mass. App. Ct. 340, 348 (2005). To prove OUI intoxicating liquor, "[i]t is not necessary that alcohol be the sole or exclusive cause" of the defendant's impairment. Commonwealth v. Rarick, 87 Mass. App. Ct. 349, 352 (2015). "A defendant may be found guilty of [OUI] intoxicating liquor if the defendant's ability to operate a vehicle safely is diminished, and alcohol is one contributing cause of the diminished ability." Commonwealth v. Stathopoulos, 401 Mass. 453, 457 (1988). Whether other substances contributed to the defendant's intoxication is "not essential to the description of the crime charged." Knight, 437 Mass. at 492, quoting Snow, 269 Mass. at 606. See Lampron, 65 Mass. App. Ct. at 347 (instruction that jury could convict defendant of OUI intoxicating liquor "even if alcohol was only one contributing cause of the defendant's diminished capacity or if the effect of the alcohol was magnified by some other cause [was proper because] such an instruction does not equate to charging the jury on a separate theory of culpability"). Therefore, the complaint was not constructively amended.

B. The Complaint Adequately Charged OUI Intoxicating Liquor.

The defendant claims that the complaint should have listed facts that were not essential to the crime charged (D.Br. 26). Specifically, he claims that the complaint should have listed marijuana as a contributing cause towards his alcohol intoxication (D.Br. 23). This argument is without merit.

The complaint must be merely "sufficient to notify the defendant[] of the jeopardy confronting [him]." Commonwealth v. Fernandes, 430 Mass. 517, 523 (1999). The complaint need not list every element of the offense, Commonwealth v. Canty, 466 Mass. 535, 547 (2013), and specifically, a complaint for OUI is adequate even where it does not allege the particular substance involved. Commonwealth v. Buckley, 76 Mass. App. Ct. 123, 130 n.4 (2010).

Here, the complaint specifically charged the defendant with operating under the influence of intoxicating liquor, second offense; listed the elements and penalties; and included a detailed description of the underlying incident (CA. 3, 6-9). Just as the complaint need not allege the defendant's alcohol

tolerance or any other factor that may influence how easily the defendant becomes impaired, the complaint need not allege any substance beyond alcohol that contributes towards the defendant's alcohol intoxication. See Commonwealth v. Urrea, 443 Mass. 530, 546 (2005) (high alcohol tolerance changes absorption rate). Therefore, the complaint adequately charged the defendant with OUI intoxicating liquor.[6]

C. The Jury Returned A Specific Verdict On OUI Intoxicating Liquor, A Crime Charged.

The defendant argues that the jury returned a general verdict on a crime not charged, namely OUI alcohol and marijuana (D.Br. 27-28). However, because OUI alcohol merely requires that alcohol be a contributing factor towards the defendant's impairment, see discussion supra, the only issue is whether all the jurors agreed that alcohol contributed to the defendant's intoxication. As shown below, it is evident from the record that all the jurors agreed.

[6] Whether the term "drug" in the third charge includes marijuana is immaterial here because the defendant was acquitted of OUI drugs (DA. 4). The Commonwealth notes, however, that the complaint did specifically list marijuana under the OUI drugs charge (CA. 4).

The judge clearly explained that the jury could not convict the defendant of OUI alcohol unless they all agreed that the defendant operated a motor vehicle under the influence of alcohol (Tr. JI:14-15). The judge instructed the jury:

> "Now, the Commonwealth has charged the defendant with committing that the offense of operating a motor vehicle while under the influence in two different ways. You may find [the defendant] guilty only if you all unanimously agree that the Commonwealth has proven beyond a reasonable doubt that the defendant committed the offense in one of those two ways. So you may find -- so you may not find the defendant guilty unless you all agree that the Commonwealth has proven beyond a reasonable doubt that the defendant operated while under the influence of alcohol or you all agree that the Commonwealth has proven beyond a reasonable doubt that the defendant operated under the influence of marijuana"

(Tr. JI:14-15). Because this instruction was clear, the jury's verdict must have been specific to the OUI intoxicating liquor count charged in the complaint. See Commonwealth v. Auclair, 444 Mass. 348, 358 (2005) ("Jurors are presumed to follow a judge's clear instructions").[7]

[7] To the extent that the defendant argues that the jury could not properly consider evidence of his marijuana intoxication as a contributing factor towards his impairment on the basis that the evidence would also go to prove OUI drugs (D.Br. 27-28), this argument is without basis. "OUI-drugs and OUI-liquor require the

II. THE MOTION JUDGE PROPERLY EXERCISED HIS DISCRETION IN ADMITTING THE TROOPER'S OPINION TESTIMONY THAT THE DEFENDANT WAS UNDER THE INFLUENCE OF ALCOHOL AND MARIJUANA, AND REGARDLESS, BECAUSE THE DEFENDANT WAS AQUITTED OF OUI DRUGS, THE DEFENDANT SUFFERED NO PREJUDICE.

The defendant argues that the rule against lay officer opinion testimony on marijuana intoxication, which was established in Commonwealth v. Gerhardt, 477 Mass. 775 (2017), six days after the trial here ended, should be applied retroactively to the trooper's opinion that the defendant "was under the influence of alcohol and marijuana" (Tr. I:32). This court reviews preserved claims of lay opinion testimony for prejudicial error. Canty, 466 Mass. at 545.

In Gerhardt, the Court decided that, although police officers may testify to their observations about a defendant's "appearance, behavior, and demeanor," they

---

Commonwealth to prove certain common elements." Commonwealth v. Werra, 95 Mass. App. Ct. 610, 616 (2019). Massachusetts has an entire body of law surrounding duplicative convictions precisely because evidence of one crime may be used to prove other crimes. See Commonwealth v. Valliere, 437 Mass. 366, 371 (2002), quoting Commonwealth v. Jones, 382 Mass. 387, 393 (1981) ("As long as each offense includes an element that the other does not, 'neither crime is a lessor-included offense of the other, and convictions on both are deemed to have been authorized by the Legislature and hence not [duplicative]'").

may not offer opinions "as to the defendant's sobriety or intoxication." 477 Mass. at 786. Instead, "[j]urors may use their common sense in evaluating whether the Commonwealth" has proved that a defendant was impaired by marijuana. Id. at 787. The court noted that it is "within the common experience and knowledge of jurors" that "marijuana can cause impairment of skills necessary to driving." Id. at 784.

The defendant's reliance on Commonwealth v. Shellenberger, 64 Mass. App. Ct. 70 (2005), and the unpublished decision Commonwealth v. Sprowl, 99 Mass. App. Ct. 1118, 2021 Mass. App. Unpub. LEXIS 229 (Apr. 5, 2021), is misplaced. In Shellenberger, the court discerned that a positive amphetamine test after driving did not suffice to prove OUI. 64 Mass. App. Ct. at 75-76. No one observed any signs of intoxication, and the positive test result did not show an amount of amphetamine in the defendant's system that an expert witness could have related to a level of intoxication. Id. In Sprowl, this Court decided that, to convict the defendant of OUI drugs, some evidence beyond the drugs found in the vehicle needed to connect the defendant's failure to adequately preform field sobriety tests to

drug use. Sprowl, 2021 Mass. App. Unpub. LEXIS 229 at *3. Here, the trooper observed signs that the defendant was intoxicated (Tr. I:9-11, 15-17, 21-24, 26, 29-32, 36), so the jurors could properly rely on their own experiences to form an opinion as to whether the defendant was under the influence of marijuana, Gerhardt, 477 Mass. at 786-787. Regardless, the prosecutor was not required to prove any marijuana intoxication to prove OUI intoxicating liquor: the only charge of which the defendant was convicted. See discussion supra.

Regardless of whether the Gerhardt rule applies retroactively,[8] there was no prejudice here because the defendant was acquitted on the OUI drugs charge, which shows that the jury rejected the officer's opinion that the defendant was under the influence of marijuana.

CONCLUSION

[The Commonwealth respectfully requests that this court affirm the defendant's conviction.]

[8] In Commonwealth v. Smith, 95 Mass. App. Ct. 437 (2019), this Court noted that the Gerhardt Court did not decide whether its new rule applied retroactively, id. at 442, and recognized that the Gerhardt rule may be presumptively prospective, id. at 441.

Applicant Details

First Name	**Max**
Last Name	**Segal**
Citizenship Status	**U. S. Citizen**
Email Address	**max.segal@berkeley.edu**
Address	**Address** Street **612 54th St. Apt. D** City **Oakland** State/Territory **California** Zip **94609** Country **United States**
Contact Phone Number	**3032170609**

Applicant Education

BA/BS From	**Tulane University**
Date of BA/BS	**May 2016**
JD/LLB From	**University of California, Berkeley School of Law** **https://www.law.berkeley.edu/careers/**
Date of JD/LLB	**May 15, 2023**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**California Law Review** **Berkeley Journal of Employment and Labor Law**
Moot Court Experience	**Yes**
Moot Court Name(s)	**McBaine**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**Yes**

Specialized Work Experience

Recommenders

Roth, Andrea
aroth@law.berkeley.edu
Farhang, Sean
farhang@berkeley.edu
Ross, Bertrall
bross@law.virginia.edu
(434) 924-7305

References

Professor Sean Farhang (farhang@berkeley.edu - (510) 643-5661);
Professor Andrea Roth (aroth@law.berkeley.edu - (510) 643-6092);
Genevieve Casey (genevieve@feinbergjackson.com - (510)-229-9937)

This applicant has certified that all data entered in this profile and any application documents are true and correct.

MAX SEGAL

612 54th St., Apt. D Oakland, CA 94609 | (303) 217-0609 | max.segal@berkeley.edu

June 22, 2023

The Honorable Morgan Christen
United States Court of Appeals for the Ninth Circuit
Old Federal Building
605 West Fourth Avenue
Anchorage, AK 99501-2248

Dear Judge Christen:

I am a recent graduate of the University of California, Berkeley, School of Law and an incoming law clerk for the Alaska Supreme Court. I am writing to apply for a clerkship in your chambers for the 2025-2026 term. When you visited our Colloquium on the Court and the Judicial Process, your comments about taking care of the state in which you sit resonated with me. I was beginning to consider pursuing federal clerkships at that time, and you made clear that you view your work as both federal and local public service. I would be honored to work in a chambers that is connected with its community and excited to spend another year in Alaska clerking for the federal appellate court that serves it.

I hope to represent unions as an attorney, and clerking for your court will also uniquely prepare me for that role. Because unions utilize atypical mechanisms of appellate procedure and various areas of federal law bear on their prerogatives, I will be a more effective advocate for unions after clerking for a federal court of appeals. My interest in representing workers grew out of my own work in hospitality before law school. I enjoyed my jobs in the food and beverage industry, but I eventually sought a career in which I could write and use my analytic ability in service of people like my former coworkers. I will continue to sharpen those skills in my upcoming clerkship and gain unique practice working through novel legal questions and recommending outcomes after drafting bench memoranda and opinions for a young state's high court.

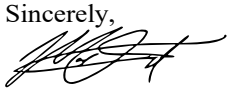
A federal appellate clerkship will also engage the skills I most enjoyed honing in law school. My formative experiences focused on reconciling the human interests that underlie difficult doctrinal questions. In my Constitutional Law, Labor Law, and Federal Indian Law courses, I learned to home in on ambiguities in judicial opinions and consider whether decisions properly accommodated competing concerns in the face of uncertain law. As a competitor in Berkeley's McBaine Moot Court Competition, I synthesized wide-ranging authorities to argue two open constitutional questions for a local government facing a challenge to its cash bail ordinance and earned the Best Brief Award. In briefing the issues, I had to defend the city's policy without devaluing individual liberty interests. Through this, I learned to assess and develop legal arguments without losing sight of potential on-the-ground impacts.

I have included my resume, my law school transcript, my undergraduate transcript, and a writing sample for your review. Letters of recommendation from the following are also attached:

- Professor Andrea Roth (aroth@law.berkeley.edu)
- Professor Sean Farhang (farhang@berkeley.edu)
- Professor Bertrall Ross (bross@law.virginia.edu)

Please do not hesitate to contact me if you have any questions. Thank you for your consideration.

Sincerely,



Max Segal

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EDUCATION

University of California, Berkeley, School of Law, Berkeley, CA
Juris Doctor, May 2023
Honors: First-Year Academic Distinction (Top 5%); Second-Year Academic Distinction (Top 33%); 2022 McBaine Moot Court Competition Semifinalist and Best Brief Award
Activities: California Law Review, Symposium Editor; *Berkeley Journal of Employment and Labor Law*, Student Notes Editor; Research Assistant to Professor Sean Farhang; 2023 McBaine Moot Court Competition Student Director; Food Justice Project, Student Advocate

Tulane University, New Orleans, LA
Bachelor of Science in Management, *cum laude,* in Legal Studies, May 2016

EXPERIENCE

Alaska Supreme Court Juneau, AK
Law Clerk for Justice Jude Pate September 2023 – August 2024

Feinberg, Jackson, Worthman & Wasow LLP Berkeley, CA
Summer Associate May 2022 – July 2022
Drafted and edited pretrial motions and discovery requests for litigation under California's Private Attorneys General Act. Synthesized federal law, insurance and pension plan terms, and client records in claims to benefits. Conducted research that informed the firm's policy advocacy and case strategies.

Office of the California Attorney General, Worker Rights and Fair Labor Section Oakland, CA
Student Extern August 2021 – November 2021
Briefed the Section on legal issues arising during enforcement of California's Unfair Competition Law. Researched federal and state labor law to craft an argument for a favorable interpretation of a new statutory provision. Reviewed and analyzed evidence in ongoing investigations into workplace violations and harmful employment practices in various industries.

United States District Court for the Eastern District of Michigan Detroit, MI
Judicial Extern for The Honorable Terrence G. Berg June 2021 – July 2021
Wrote bench memoranda that explained legal issues in a Social Security appeal and addressed justiciability questions in a First Amendment case and drafted orders. Analyzed briefing and researched relevant law in cases before the court and recommended outcomes on procedural and substantive matters.

AJ's Pit BBQ Denver, CO
Cook September 2019 – July 2020
Prepared and cooked all food items according to house recipes. Ensured consistency and quality while adhering to county food safety standards. Readied restaurant for service and maintained wood-fired smoker.

Bozeman Community Food Co-op Bozeman, MT
Cheese Purchaser October 2018 – August 2019
Ordered products from wholesalers based on customer tastes, current inventory, and departmental revenue targets. Provided customers with comprehensive product information and friendly, proactive service.

SKILLS & INTERESTS

- Fiction Writing: Published – *Roaches*, The Tulane Review, Fall 2018
- Cooking and Hospitality: Created and executed regular pop-up dining concept and catered for clients. Worked part-time positions during and after college in fine dining, cocktail bars, and food trucks.

Berkeley Law
University of California
Office of the Registrar

Max Segal
Student ID: 3035546747
Admit Term: 2020 Fall

Printed: 2023-06-09 06:22

Academic Program History
Major: Law (JD)

Awards

Best Brief - McBaine Moot Court Competition

2020 Fall

Course		Description	Units	Law Units	Grade
LAW	200F	Civil Procedure Sean Farhang	5.0	5.0	H
LAW	201	Torts Talha Syed	4.0	4.0	HH
LAW	202.1A	Legal Research and Writing Lucinda Sikes	3.0	3.0	CR
LAW	230	Criminal Law Khiara Bridges	4.0	4.0	H
LAW	286.72	Justice Christopher Kutz	1.0	1.0	CR

	Units	Law Units
Term Totals	17.0	17.0
Cumulative Totals	17.0	17.0

2021 Spring

Course		Description	Units	Law Units	Grade
LAW	202.1B	Written and Oral Advocacy **Units Count Toward Experiential Requirement** Lucinda Sikes	2.0	2.0	H
LAW	202F	Contracts Prasad Krishnamurthy	4.0	4.0	HH
LAW	220.6	Constitutional Law **Fulfills Constitutional Law Requirement** Bertrall Ross	4.0	4.0	HH
LAW	223	Administrative Law Kenneth Bamberger	4.0	4.0	H

	Units	Law Units
Term Totals	14.0	14.0
Cumulative Totals	31.0	31.0

2021 Fall

Course		Description	Units	Law Units	Grade
LAW	222	Federal Courts Erwin Chemerinsky	4.0	4.0	H
LAW	295	Civ Field Placement Ethics Sem **Fulfills Either Prof. Resp. or Experiential** Susan Schechter Vadim Glukhovsky	2.0	2.0	P
LAW	295.1G	Calif Law Review Saira Mohamed	1.0	1.0	CR
LAW	295.6A	Civil Field Placement **Units Count Toward Experiential Requirement** Susan Schechter	5.0	5.0	CR

	Units	Law Units
Term Totals	12.0	12.0
Cumulative Totals	43.0	43.0

2022 Spring

Course		Description	Units	Law Units	Grade
LAW	222.13	Colloquium Court & Jud Proc. Tejas Narechania	2.0	2.0	P
LAW	223.1	Election Law **Fulfills 1 of 2 Writing Requirements** Abhay Aneja	3.0	3.0	HH
LAW	227	Labor Law Kristin Martin	3.0	3.0	H
LAW	244.1	Adv Civ Pro:Complex Civil Lit Andrew Bradt	3.0	3.0	P
LAW	295.3J	McBaine Moot Court Competition **Units Count Toward Experiential Requirement** Natalie Winters	2.0	2.0	CR
LAW	299	Indiv Res Project **Fulfills Writing Requirement** Erwin Chemerinsky	2.0	2.0	HH

	Units	Law Units
Term Totals	15.0	15.0
Cumulative Totals	58.0	58.0

Carol Rachwald, Registrar

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Berkeley Law
University of California
Office of the Registrar

Max Segal
Student ID: 3035546747
Admit Term: 2020 Fall

2022 Fall

Course		Description	Units	Law Units	Grade
LAW	241	Evidence Andrea Roth	4.0	4.0	HH
LAW	244.2	Remedies Robert Infelise	3.0	3.0	P
LAW	250	Business Associations Frank Partnoy	4.0	4.0	P
LAW	295.3D	Advocacy Competitions Std Dir Natalie Winters	1.0	1.0	CR
LAW	297	Self-Tutorial Sem Sean Farhang	2.0	2.0	CR

	Units	Law Units
Term Totals	14.0	14.0
Cumulative Totals	72.0	72.0

2023 Spring

Course		Description	Units	Law Units	Grade
LAW	206C	Note Publishing Workshop Andrew Bradt Katerina Linos	1.0	1.0	CR
LAW	208.8	Foundation, Sociology of Law Catherine Albiston	3.0	3.0	H
LAW	225	Legislation & Statutory Interp Jonathan Gould	3.0	3.0	HH
LAW	244.63	Impct Ltgtn Strat Struc & Proc **Fulfills 1 of 2 Writing Requirements** Burt Neuborne Stephen Berzon	2.0	2.0	H
LAW	286.5	Federal Indian Law Richard Davis	4.0	4.0	P
LAW	295.3D	Advocacy Competitions Std Dir Natalie Winters	1.0	1.0	CR

	Units	Law Units
Term Totals	14.0	14.0
Cumulative Totals	86.0	86.0

Carol Rachwald, Registrar

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270 Simon Hall
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KEY TO GRADES

1. Grades for Academic Years 1970 to present:

HH	–	High Honors	CR	–	Credit
H	–	Honors	NP	–	Not Pass
P	–	Pass	I	–	Incomplete
PC	–	Pass Conditional or Substandard Pass (1997-98 to present)	IP	–	In Progress
NC	–	No Credit	NR	–	No Record

2. Grading Curves for J.D. and Jurisprudence and Social Policy PH.D. students:

In each first-year section, the top 40% of students are awarded honors grades as follows: 10% of the class members are awarded High Honors (HH) grades and 30% are awarded Honors (H) grades. The remaining class members are given the grades Pass (P), Pass Conditional or Substandard Pass (PC) or No Credit (NC) in any proportion. In first-year small sections, grades are given on the same basis with the exception that one more or one less honors grade may be given.

In each second- and third-year course, either (1) the top 40% to 45% of the students are awarded Honors (H) grades, of which a number equal to 10% to 15% of the class are awarded High Honors (HH) grades or (2) the top 40% of the class members, plus or minus two students, are awarded Honors (H) grades, of which a number equal to 10% of the class, plus or minus two students, are awarded High Honors (HH) grades. The remaining class members are given the grades of P, PC or NC, in any proportion. In seminars of 24 or fewer students where there is one 30 page (or more) required paper, an instructor may, if student performance warrants, award 4-7 more HH or H grades, depending on the size of the seminar, than would be permitted under the above rules.

3. Grading Curves for LL.M. and J.S.D. students for 2011-12 to present:

For classes and seminars with 11 or more LL.M. and J.S.D. students, a mandatory curve applies to the LL.M. and J.S.D. students, where the grades awarded are 20% HH and 30% H with the remaining students receiving P, PC, or NC grades. In classes and seminars with 10 or fewer LL.M. and J.S.D. students, the above curve is recommended.

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Transcript Created: 22-Dec-2020

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NAME: Segal, Max Jacob Goodman
STUDENT ID: 213005965
BIRTH DAY: September 27

Tulane University

Office of the Registrar
New Orleans, La. 70118-5698
(504) 865-5231

DATE ISSUED: 12/22/2020

NOT APPLIED TO CURRENT PROGRAM *
INCLUDES INITIAL STATISTICS ++

UNDERGRADUATE ACADEMIC RECORD

Degrees Awarded:

05/14/2016 Bachelor Science Management
Business School
Major 1: Legal Studies in Business
Honors: cum laude

Certificates Awarded:

05/14/2016 Business School
Entreprenurial Management

2012 Fall

ADMITTED PROGRAM:
Business School
Bachelor Science Management

COURSE NUMBER	COURSE TITLE	GRADE	HOURS (ATTEMPTED) EARNED	QUALITY POINTS
HISU-1420	US Hist 1865 To The Present	CR	3.00	
MATH-1210	Calculus I	CR	4.00	
ENGL-1010	Writing	CR	4.00	
POLA-2100	American Government	CR	3.00	
TIDB-1890	Service Learning: TIDB1110	S	(0.00)	
SOCI-1090	Social Problems	A	3.00	12.00
ECON-1010	Intro to Microeconomics	B+	3.00	9.99
SPAN-2040	Span Conversatn & Comp	B+	3.00	9.99
PHIL-1030	Ethics	A	3.00	12.00
PSYC-1000	Introductory Psych	B	3.00	9.00
TIDB-1010	More Than Just Busn I	B+	1.50	5.00
PSYC-1001	Psychology Beyond Classroom	S	(0.00)	

	EHRS	QHRS	QPTS	GPA
CURRENT:	**30.5**	**16.5**	**57.98**	**3.514**
CUMULATIVE:	**30.5**	**16.5**	**57.98**	**3.514**

2013 Spring

COURSE NUMBER	COURSE TITLE	GRADE	HOURS (ATTEMPTED) EARNED	QUALITY POINTS
POLC-2300	Comparative Politics	B+	3.00	9.99
POLI-2500	International Relations	A-	3.00	11.01
ECON-1020	Intro to Macroeconomics	A	3.00	12.00
TIDB-1110	More Than Just Business II	A-	1.50	5.51
TIDB-1890	Service Learning: TIDB-1110-21	S	1.00	
MUSC-1090	Intro To Popular Music	B+	3.00	9.99

	EHRS	QHRS	QPTS	GPA
CURRENT:	**14.5**	**13.5**	**48.50**	**3.592**
CUMULATIVE:	**45.0**	**30.0**	**106.47**	**3.549**

2013 Fall

COURSE NUMBER	COURSE TITLE	GRADE	HOURS (ATTEMPTED) EARNED	QUALITY POINTS
CDMA-1201	Career Dvlp & Mgmt I	S	2.00	
PHYS-1010	Great Ideas in Science &Tech	B+	4.00	13.32
LGST-3010	Legal/Ethical/Regul Busn	A-	3.00	11.01
MATH-1140	Statistics For Business	C	4.00	8.00
ACCN-2010	Financial Accounting	A	3.00	12.00

	EHRS	QHRS	QPTS	GPA
CURRENT:	**16.0**	**14.0**	**44.33**	**3.166**
CUMULATIVE:	**61.0**	**44.0**	**150.80**	**3.427**

2014 Spring

COURSE NUMBER	COURSE TITLE	GRADE	HOURS (ATTEMPTED) EARNED	QUALITY POINTS
JWST-1010	Intro Jewish Civilizatn	A	3.00	12.00
MCOM-3010	Management Communication	B	3.00	9.00
LGST-4100	Business Law	A-	3.00	11.01
FINE-3010	Financial Management	A	3.00	12.00
INFO-3010	Business Modeling	A	3.00	12.00

	EHRS	QHRS	QPTS	GPA
CURRENT:	**15.0**	**15.0**	**56.01**	**3.734**
CUMULATIVE:	**76.0**	**59.0**	**206.81**	**3.505**

ISSUED TO: MAX SEGAL
927 PARDEE ST
BERKELEY, California 94710-2623

Colette P. Raphel
University Registrar

UNDERGRADUATE ACADEMIC RECORD

NAME: Segal, Max Jacob Goodman
STUDENT ID: 213005965
BIRTH DAY: September 27

Tulane University

Office of the Registrar
New Orleans, La. 70118-5698
(504) 865-5231

DATE ISSUED: 12/22/2020

NOT APPLIED TO CURRENT PROGRAM *
INCLUDES INITIAL STATISTICS ++

2014 Fall

COURSE NUMBER	COURSE TITLE	GRADE	HOURS (ATTEMPTED) EARNED	QUALITY POINTS
MGMT-4170	Negotiations	A-	3.00	11.01
MGMT-4180	Mgmt of Tech & Innovatn	A-	3.00	11.01
FINE-4140	Risk Management	A-	3.00	11.01
FINE-4150	International Finance	B+	3.00	9.99

	EHRS	QHRS	QPTS	GPA
CURRENT:	**12.0**	**12.0**	**43.02**	**3.585**
CUMULATIVE:	**88.0**	**71.0**	**249.83**	**3.519**

Semester Abroad - Copenhagen Business School

2015 Spring

COURSE NUMBER	COURSE TITLE	GRADE	HOURS (ATTEMPTED) EARNED	QUALITY POINTS
LGST-4110	Legal Writing & Research	B+	3.00	9.99
ACCN-3010	Managerial Accounting	C-	3.00	5.01
LGST-4180	Sports & Entertnmt Law	B+	3.00	9.99
MKTG-3010	Marketing Fundamentals	A-	3.00	11.01
MGMT-3010	Organizational Behavior	B+	3.00	9.99

	EHRS	QHRS	QPTS	GPA
CURRENT:	**15.0**	**15.0**	**45.99**	**3.066**
CUMULATIVE:	**103.0**	**86.0**	**295.82**	**3.440**

2015 Fall

COURSE NUMBER	COURSE TITLE	GRADE	HOURS (ATTEMPTED) EARNED	QUALITY POINTS
MGMT-4900	Busn Integratn Capstone	A	1.00	4.00
LGST-3890	Service Learning: LGST	S	1.00	
MGMT-4010	Strategic Management	B	3.00	9.00
MGMT-4610	Management of New Ventures	A	3.00	12.00
SOWK-2230	Guns & Gangs	A	3.00	12.00
LGST-4160	Law of E-Commerce	A-	3.00	11.01

	EHRS	QHRS	QPTS	GPA
CURRENT:	**14.0**	**13.0**	**48.01**	**3.693**
CUMULATIVE:	**117.0**	**99.0**	**343.83**	**3.473**

2016 Spring

COURSE NUMBER	COURSE TITLE	GRADE	HOURS (ATTEMPTED) EARNED	QUALITY POINTS
COMM-3270	Ridley Scott & George Lucas	A-	3.00	11.01
MKTG-4275	Law in Marketing	A	3.00	12.00
ENLS-3640	Screenwriting	A	3.00	12.00
LGST-4200	LSAT Review	S	1.00	

	EHRS	QHRS	QPTS	GPA
CURRENT:	**10.0**	**9.0**	**35.01**	**3.890**
CUMULATIVE:	**127.0**	**108.0**	**378.84**	**3.508**

DEGREE REQUIREMENTS COMPLETED FOR
Bachelor Science Management

CERTIFICATE REQUIREMENTS COMPLETED FOR
Certificate

**** END OF UNDERGRADUATE RECORD ****

ISSUED TO: MAX SEGAL
927 PARDEE ST
BERKELEY, California 94710-2623

Colette P. Raphel
Colette P. Raphel
University Registrar

This transcript processed and delivered by Credentials' TranscriptsNetwork

Tulane University

College Board #6832
U.S. Dept of Ed #2029

PURSUANT TO FEDERAL LAW 93-380, AS AMENDED, THIS INFORMATION IS TRANSFERRED ONLY ON THE CONDITION THAT YOU WILL NOT PERMIT ACCESS TO ANY OTHER PARTY WITHOUT THE WRITTEN CONSENT OF THE STUDENT.

NAME HISTORY
Tulane was founded in 1834 as the Medical College of Louisiana. In 1847, the Medical College merged into the Public University of Louisiana adding a Law School and College of Arts and Sciences (known as Paul Tulane College since November, 1993). In 1884, it was reorganized as Tulane University, a private non-sectarian university. Newcomb College, founded in 1886, was the Women's Coordinate College of Tulane University.

VALIDATION
The transcript, subsequent to and including fall 1980, is official only when it is printed on green safety paper, with the university seal, and bears the signature of the Registrar. Prior to fall 1980, the transcript is not printed on green safety paper but is official when it includes the university seal and bears the signature of the Registrar.

HONORS COURSES
Honors courses are designated by an "H" immediately after the course number.

CONCENTRATION
A concentration is a directed program of study within a major area. If a concentration program was completed, the title of the concentration is indicated on the transcript after the slash (/) in the major translation.

CREDIT HOUR
As of January, 1981, Tulane University's undergraduate colleges have changed from the unit system of credit to the credit hour. On transcripts from fall 1970 through summer 1980, undergraduate credit was granted in terms of units (1 unit = 4 credit hours). The current credit hour (like the unit) represents measurement of academic progress in terms of work undertaken and satisfactorily completed – not specifically related to an hour concept for class lecture or recitation.

All attempted work will appear on this record. However, different colleges within the university count such work differently in computing grade-point averages.

GRADE POINT AVERAGE
The grade point average is computed by dividing the number of quality points by the number of quality hours (GPA = QPTS/QHRS). Quality hours are accumulated in graded courses. Quality points are determined by multiplying the quality hours associated with a course by the grade points.

THE CALENDAR
Tulane follows the early semester type calendar consisting generally of 16 weeks of class days (the sum of regular class days, review days, and final exam days). The School of Medicine operates on a year-long term. There are summer sessions in all schools of varying lengths; however, the School of Social Work offers a full semester of work in the summer.

CREDIT FOR STUDY ABROAD COURSES
Beginning fall 2015, courses earned on study abroad programs through Tulane University and numbered 5380 and/or 5390 is no longer calculated into the semester or cumulative GPA.

HURRICANE KATRINA
Hurricane Katrina forced the closure of Tulane University for much of the fall 2005 term. During that term Tulane students enrolled as visitors at more than 600 institutions across the country. The work earned by students visiting elsewhere is posted on this transcript as consortium credit and is annotated as such. A limited number of courses were also completed at remote Tulane sites and that work will not carry the notation.

The academic restructuring approved by the Tulane board on December 8, 2005 effective fall 2006, included the following changes: The creation of the Newcomb-Tulane Undergraduate College and the elimination of the coordinate college system, consisting of Newcomb College for undergraduate women and Tulane College for undergraduate men. All undergraduate students, regardless of major, matriculate through the Newcomb-Tulane Undergraduate College. Liberal Arts and Sciences and the School of Engineering were reconfigured into two schools, the School of Liberal Arts and the School of Science and Engineering. The Graduate School was eliminated as a separate administrative entity. Graduate degree programs will be administered by the appropriate school or college. University College was renamed the School of Continuing Studies (now the School of Professional Advancement), the part time division of Tulane.

COVID-19 PANDEMIC
During the Spring 2020 semester, Tulane University was affected by the global COVID-19 pandemic. Instructional methods were modified and temporary changes to grading policy were implemented, including adjustments to the options for pass/minimum pass/unsatisfactory grading for all undergraduate students and graduate students in the Schools of Architecture, Law, Liberal Arts, Professional Advancement, and Public Health. Passing grades earned under the temporary grading policy do not carry quality points toward the cumulative GPA, but otherwise fulfill all degree requirements.

TULANE UNIVERSITY SCHOOLS AND COLLEGES	
AR	School of Architecture
BS(U)	School of Business – Undergraduate only
BS(G)	School of Business – Graduate only
CS	School of Continuing Studies
EN(U)	School of Engineering – Undergraduate only
EN(G)	School of Engineering – Graduate only
GS	Graduate School
LA	School of Liberal Arts
LS	School of Law
MD	School of Medicine
NC	Newcomb College
PA	School of Professional Advancement
PH(U)	School of Public Health and Tropical Medicine – Undergraduate
PH(G)	School of Public Health and Tropical Medicine – Graduate
SE	School of Science and Engineering
SW	School of Social Work
TC	Tulane College
UC	University College

GRADING SYSTEM

Grade		Quality Points	Valid In
A+	4	Excellent	LS only**
A	4	Excellent	All schools
A-	3.67	Excellent	All schools
AU	-	Audit	All schools
B+	3.33*	Above Average	All schools
B	3	Above Average	All schools
B-	2.67	Above Average	All schools
C+	2.33*	Average	All schools
C	2	Average	All schools
C-	1.67*	Average	All schools
CM	-	Commend	AR
CN	-	Conditioned	AR, MD
CR	-	Credit Granted	All schools
D+	1.33	Below Average	All schools
D	1	Below Average	All schools
D-	0.67*	Below Average	All schools
E	-	Excellent	Foreign Law Students Only***
F	-	Failing	All schools
HP	-	High Pass	AR, BS(G), LS, MD
HR	-	High Recommended	Foreign Law Students Only***
I	-	Incomplete	All schools****
IP	-	In Progress	All schools
MP	-	Marginal Pass	All schools
NC	-	No Credit	All schools
NR	-	Not Recommended	Foreign Law Students Only***
P	-	Pass	All schools
PB	-	Probation	AR
R	-	Research	All schools
RM	-	Recommended	Foreign Law Students Only***
S	-	Satisfactory	All schools
U	-	Unsatisfactory	All schools
W	-	Withdrawn	All schools
WF	-	Withdrawn Failing	All schools
WP	-	Withdrawn Passing	All schools
UW	-	Unofficial Withdrawal	All schools
VG	-	Very Good	Foreign Law Students Only***

* In Law, prior to summer 1991, the quality points for these grades were 3.5 (B+), 2.5 (C+), 1.5 (C-) and 0.5 (D-).
** Effective fall 2010.
*** Awarded prior to fall 2015 to foreign students in the School of Law
**** Resolved Incomplete grades will continue to show - / I after the final grade to indicate the initial assignment of an Incomplete

February 23, 2023

The Honorable Morgan Christen
Old Federal Building
605 West Fourth Avenue, Suite 252
Anchorage, AK 99501-2248

Dear Judge Christen:

I write to recommend Max Segal for a clerkship in your chambers. Max was in the top handful of students in my 110-person Fall 2022 Evidence class and did top-notch research for me and a colleague on an empirical project. I've also worked closely with him on a labor law-related paper and gotten to know him because I clerked in Alaska, where he is headed for a clerkship next year. I very enthusiastically recommend him for a federal clerkship at the highest levels.

Max earned a coveted "High Honors" (top 10%) award in my Fall 2022 evidence class, based on a difficult 60-question multiple choice test (which he nearly aced), a policy essay, and quality of in-class participation. I noted while anonymously grading his policy answer that it was one of the most creative in the class. His in-class and office hours questions made him one of the two most impressive students in the whole class, in my view. In fact, in all my years of teaching evidence, he is the only student who has ever articulated a reason I found persuasive for allowing a witness to be rehabilitated with a prior consistent statement under FRE 801(d) merely because they have been impeached with a prior inconsistency (California allows this but the federal rules are ambiguous on this point, and I noted to the class that I just don't see how it logically rehabilitates the witness; Max suggested that perhaps the more prior consistent statements there are, with only 1 inconsistency, the more likely the inconsistency was an inadvertent misstatement or outlier, which is different from the "mere repetition does not imply veracity" logic).

The reason it wasn't a surprise that Max earned an HH in my class (and in many other classes, it turns out) was that I already knew him, before having him as a student, as a superb research assistant. My colleague Sean Farhang, a political scientist and civil litigation expert, and I hired Max as an RA to help us on an ambitious empirical project studying the circumstances under which Congress chooses criminalization as a regulatory tool. Max read and coded scores of laws, starting in the 1880s, which required not merely identifying criminalization measures but understanding what the law was trying to do, how many discrete forms of conduct the law criminalized, whether the law also empowered the administrative state to develop even more criminal regulations pursuant to the statute, and whether the law truly created a new crime or was related to an earlier law. Max helped us tweak the coding instructions as we encountered each new permutation or difficulty.

Most impressively, Max was the trainer for the coders that came after him, and did a superb job in explaining both to undergraduates and fellow law students, some of whom had never coded before, both the nitty gritty of their assignment but also the import and mission of the project from a 30,000 foot perspective. I have never been more impressed with an RA's maturity, analytical sophistication, patience, and ability to explain complex concepts in a way that meets people where they are without being condescending.

The most recent chance I've gotten to see Max's writing and analytical abilities is in a well-written and well-argued paper he wrote exploring a potential equal protection challenge to sub-minimum-wage tipping laws for service industry workers. What impressed me was that I wasn't even his advisor; he just reached out, since I knew him as an RA and said I'd always be happy to read anything of his, to see if I would be willing to offer feedback. When I returned his first draft with a fair amount of reorganizing and substantive "red ink" (I *love* editing student writing but am a pretty harsh editor especially on well-written drafts where I know the student can take it), Max didn't blink an eye. In fact, he asked if we could meet, and proceeded to rework the paper and ask a few insightful follow-up questions that showed he had understood my feedback and wanted to make the most of it. I felt like I was discussing the paper not with a 3L, but with a high-level junior attorney. The experience left me thinking he would make an excellent clerk; very smart, very hard working, not defensive, and trustworthy in the sense of being willing to acknowledge what he doesn't know and make sure he asks the right questions.

I was so impressed with Max that, after I was surprised at hearing that he didn't already have a clerkship lined up, I made a special point of encouraging a visiting Alaska Supreme Court justice (the court I clerked for) to interview him and encouraging Max to apply. The Alaska Supreme Court is not a typical state court; it tends to hire its clerks from a handful of schools (Yale, Harvard, Stanford, Berkeley, and a couple of others) and is a highly intellectual group of renaissance people – concert pianists who are on the ski patrol and write cowboy poetry in their spare time. Knowing that Max is from Colorado and is an outdoorsy intellectual who has published creative writing, I thought it would be a good fit. Of numerous impressive interviewees at Berkeley, Max alone was chosen.

Finally, a note on Max's personality and clerkship plans. Max has, true to form, been deliberate in clerkship applications, just like he was with summer jobs (he eschewed big law to pursue small firms and government doing plaintiff-side work). He is a respectful, thoughtful, confident but humble, and quite wry/funny, young person. He is a self-described introvert but clearly gets along well with his classmates. Notably, he worked four years in the food service industry (I worked at McDonald's in high school, and it was a formative experience). I would be delighted to work with him as a colleague or clerk, and I hope he explores academia as a career path.

In sum, Max would be a superb federal clerk. Please do not hesitate to contact me by cell phone, 202-669-6565, or e-mail, aroth@law.berkeley.edu, with any questions.

Andrea Roth - aroth@law.berkeley.edu

Very truly yours,

Andrea Roth
Professor of Law
UC Berkeley School of Law

March 31, 2023

The Honorable Morgan Christen
Old Federal Building
605 West Fourth Avenue, Suite 252
Anchorage, AK 99501-2248

Dear Judge Christen:

I write this letter in support of Max Segal's clerkship application. Max was a student in my civil procedure class in the fall of 2020, and he has worked as my research assistant this academic year. Max is a fantastic talent, and it is my pleasure to write this letter.

Max was among the top students in my civil procedure class. His midterm exam received the highest score in the class, and his performance on the final was very strong as well. His exams rose to the top of the pile because they demonstrated an exceptional mastery of the course materials. He consistently recognized the issues my questions intended to surface, and applied the law to them with subtlety and dexterity. Max is also a talented writer. Even within the tight time constraints of my exams, Max's answers were beautifully organized, appropriately lean, and very clearly executed.

Max's outstanding performance in my class, I now know, was in keeping with an extremely successful record in the law school. He was in the top 5% of the class in his first year, earned a spot on the California Law Review, and was elevated to the position of Symposium Editor for next year. At the same time, Max has worked on the Berkeley Journal of Labor and Employment Law as Articles Editor this year, and will be their Student Notes Editor next year. It is telling that he has elected to work on the Berkeley Journal of Labor and Employment Law at the same time as the California Law Review. It shows that he is an incredibly disciplined and hard worker, and that he has strong, substantive interests in the field of labor and employment. With the law review feather already planted in his cap, he is no less incline to work and learn in the field that he intends to pursue—worker's rights.

Based on Max's exceptional performance in my class I recruited him as a research assistant. The project is new and involves a complicated and challenging effort to collect a random sample of federal statutes spanning from 1887 to 2020 and code them for a variety of fine grained and complex characteristics. The work requires understanding complex regulatory statutes both in terms of substantive regulatory policy, and with respect to administrative and court-based implementation.

When I hired Max I thought that I had a well-designed project for him to implement. While most students are too timid to question a coding protocol that I give them to implement, Max raised many questions about potential problems in my approach. Our ensuing conversations pushed me to rethink and significantly improve the research design. The project is far better as a result.

Max mastered the very challenging work quickly and the work he has produced on the project is of the highest quality. I soon began to rely on him to train and supervise undergraduates, and more recently, to train and supervise other law students. At this point Max is single-handedly running the project. He is utterly indispensable to me. In this capacity I have also observed that Max is very effective in managing others – both undergrads and his peer law students – in a way that is always respectful and collegial, and also highly effective in achieving the project's goals. The students on the project really respect Max and enjoy working with him.

It also bears emphasis that Max has been among the most reliable research assistants I have ever had. This probably has something to do with the fact that he worked a fair number of years before law school. He knows what it is to have a job. He unfailingly works his scheduled shifts on time, focuses on the work during his shifts, and is highly responsive to all of my requests and suggestions. In addition to being very smart, he has a rigorous work ethic and is a model employee.

In sum, Max is a star. He is a top student, a brilliant research assistant, and an effective manager. I also can say, based on extensive one-on-one interactions, that Max is very easy going, carries himself with humility, and is a pleasure to work with. He has the kind of personality that will fit seamlessly into a small working community in chambers. I give him my highest possible recommendation.

Sincerely,

Sean Farhang
Professor of Law

Sean Farhang - farhang@berkeley.edu

This writing sample is an excerpted version of the brief I submitted for Berkeley Law's 2022 James Patterson McBaine Honors Moot Competition. It won the competition's Best Brief Award. McBaine is Berkeley Law's internal appellate-style competition. In 2022, each participant argued two questions raised in Walker v. City of Calhoun, GA*, 901 F.3d 1245 (11th Cir. 2018) as if on appeal to the Supreme Court. I was assigned to represent the City of Calhoun. The competition is "open-universe," except competitors could not reference briefs the parties submitted in the lower courts. The research and writing are completely my own in accordance with competition rules. I would be happy to provide the complete brief upon request.*

QUESTIONS PRESENTED

1. Does heightened scrutiny under the Fourteenth Amendment apply to a government policy that requires all misdemeanor and traffic-offense arrestees be released within 48 hours?

2. Can the government keep some misdemeanor and traffic-offense arrestees in jail for up to 48 hours after arrest to assure their presence at trial?

INTRODUCTION

This case will determine whether state and local governments are permitted and encouraged to experiment with bail reform measures that accommodate both community and individual interests. On November 14, 2019, Representative Karen Bass opened a congressional hearing on bail administration. She concluded her statement by asserting "our bail and pretrial systems must be reformed." *The Administration of Bail by State and Federal Courts: A Call for Reform Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Sec. of the H.R. Comm. on the Judiciary*, 116th Cong. 4 (2019). Mr. Brandon Buskey of the American Civil Liberties Union ("ACLU") was among experts testifying. In his prepared statement, Mr. Buskey proclaimed "[a]t the ACLU, our vision is a world in which 95 percent of all people arrested are released within 48 hours." *Id.* at 9.

Congruent with that end, Respondent City of Calhoun ("the City") had previously implemented a bail policy ("the Standing Order") whose "purpose [was] to permit the posting of bail . . . within 48 hours of being confined to the Gordon County Jail . . . ." *See* R. at 5; R. at 31-32. In issuing the Standing Order, the City determined it achieved local interests without

excessive restrictions on individual liberty. The Constitution permits and endorses this sort of state and local experimentation and incremental progress. The City has taken a step toward bail reform. Today, it asks the Court to rule in its favor and enable other governments to do the same.

STATEMENT OF THE CASE

[summarized for brevity]

A police officer for Respondent City of Calhoun arrested Petitioner Maurice Walker as a pedestrian under the influence of alcohol on September 3, 2015. Officers took Walker to the municipal jail and told him he would be detained unless he could post the $160 bond the City's bail schedule prescribed for his misdemeanor. Petitioner could not afford this. The City's former bail policy required Petitioner to remain in confinement until his First Appearance hearing because he could not post secured bond. While detained, Petitioner filed this suit alleging the City violated the Fourteenth Amendment because it imposed pretrial detention on indigent arrestees while those who could afford bail could obtain immediate release.

The City later released Petitioner and the Municipal Court issued its Standing Bail Order. The Standing Order required the City to provide an indigency hearing to all arrestees who could not post secured bond within 48 hours. The Standing Order mandated the City release any misdemeanor or traffic offense arrestee if the court deemed that person indigent at hearing or if it could not hold one within the prescribed time frame.

Petitioner maintained his suit against the City. The district court granted his motion for a preliminary injunction. It reviewed the Standing Order using heightened scrutiny under the Equal Protection Clause and found Petitioner was likely to succeed on the merits in proving the Standing Order was unconstitutional. The Eleventh Circuit vacated the preliminary injunction after finding the Standing Order compelled a due process balancing test.

SUMMARY OF ARGUMENT

[omitted for brevity]

ARGUMENT

1. Heightened scrutiny does not apply to a government policy that grants all misdemeanor and traffic offense arrestees pretrial release within 48 hours.

"The [Fourteenth Amendment's] Equal Protection Clause does not require absolute equality or precisely equal advantages." *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 24 (1973). Therefore, a state action that draws some classification is generally valid unless it has no rational justification. *McDonald v. Bd. of Election Comm'rs of Chicago*, 394 U.S. 802, 809 (1969). This permits states to achieve reform "one step at a time" even if such steps draw non-suspect classifications so long as they fall short of invidious discrimination. *Schilb v. Kuebel*, 404 U.S. 357, 364 (1971). Such classifications only require the state's policy bear some rational relationship to a legitimate government purpose. *Rodriguez*, 411 U.S. at 40.

Here, the City has chosen to reform its bail policy step-by-step. The Standing Order is such a step, and the district court acknowledged it was one "in the right direction." R. at 34. Applying heightened scrutiny to a policy granting all misdemeanor and traffic offenders release within 48 hours would stunt this progress and would be inconsistent with Court precedent.

a. The Eleventh Circuit correctly reviewed the Standing Order using due process considerations.

Fee requirements are typically valid when they satisfy rational basis review. *M.L.B. v. S.L.J.*, 519 U.S. 102, 105-06 (1996). However, fees that limit access to features of the court system in criminal or "quasi-criminal" cases fall within an exception to this rule. *Id.* Recognizing that criminal justice administration implicates important state interests as well as individual freedoms, courts balance those interests against each other to determine whether the fee requirement violates the Constitution. *Bearden v. Georgia*, 461 U.S. 660, 666-67 (1983).

The Standing Order regulates access to pretrial release. Heightened scrutiny under the Equal Protection Clause does not apply to it because it does not categorically deprive indigent arrestees of pretrial release or subject a definable class to pretrial confinement. Instead, a due process balancing analysis applies. In applying an equal protection framework, the district court cited cases that do not use language consistent with heightened scrutiny. Therefore, a balancing analysis is proper.

i. The Standing Order does not absolutely deprive indigent offenders of a desired benefit.

A wealth-based classification is permissible if it does not cause a discernable class to suffer an absolute deprivation of some desired benefit. *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 20 (1973). Heightened scrutiny does not apply to requirements that only have a disproportionate impact on indigent persons. *See id.* at 19. In the criminal justice context, "the mere fact that an indigent [person] . . . may be imprisoned . . . longer than a non-indigent" for the same offense "does not . . . give rise to a violation of the Equal Protection Clause." *Williams v. Illinois*, 399 U.S. 235, 242 (1970).

The *Rodriguez* Court did not apply heightened scrutiny to an education policy that provided more funding for schools in wealthier districts because it did not deprive a discrete class of indigent children of public education. 411 U.S. at 23. The class challenging the policy argued Texas's education funding system discriminated against indigent students because they received a low-quality public education compared to those in wealthier districts. *Id.* at 24. However, the Court noted the Equal Protection Clause does not require equal benefits for all. *Id.* It found the government provided all children an "adequate" education. *Id.* Since all enjoyed at least this, the funding scheme did not discriminate against any class. *See id.* at 25. The scheme

did not create an absolute deprivation, so the Court refused to apply heightened scrutiny when reviewing it. *See id.* at 40.

The Court also noted many indigent families did not live in the poorest districts. *Id.* at 23. Thus, the funding scheme did not force a less expensive education on all poor students. *Id.* Heightened scrutiny was inappropriate because the system did not operate to the "peculiar disadvantage of any class fairly definable as indigent . . . ." *Id.* at 22.

The Court in *Williams v. Illinois*, 399 U.S. 235 (1970) found subjecting poor defendants to imprisonment for a term greater than the prescribed maximum for their offenses did violate the Equal Protection Clause. *Id.* at 240-41. Illinois subjected those who could not pay a criminal fine to further prison time to earn credit toward any remaining balance. *Id.* at 256. This subjected only indigent defendants to a sentence longer than the statutory maximum. *Id.* The Court made clear that requiring an indigent person to serve a longer sentence than a monied defendant did not violate the Equal Protection Clause if the confinement period was within the statutory limit. *Id.* at 243. However, because the state's policy only imposed extra-maximum sentences on poor defendants, it impermissibly discriminated against them. *Id.* at 241-42.

A bail policy that releases all arrestees within 48 hours does not absolutely deprive any arrestee of pretrial release. In *Rodriguez*, the government asserted it provided all children, including those residing in poor districts, with a sufficient minimum level of public education. *Rodriguez*, 411 U.S. at 24. Here, the Standing Order grants all misdemeanor and traffic offense arrestees pretrial release within a maximum of 48 hours. R. at 31-32. The *Rodriguez* Court found a mere disparity in quality did not compel heightened scrutiny. *See id.* at 24. Speedier release for arrestees with bail money is not absolute equality. But just as all Texas children had access to things like teachers, books, and transportation, *Rodriguez*, 411 U.S. at 25, all Calhoun arrestees

have access to pretrial release. The Court in *Rodriguez* refused to apply heightened scrutiny merely because those in wealthier districts received a more expensive education. 411 U.S. at 19. Likewise, the Standing Order should not receive heightened scrutiny because people who post money bail are released faster.

The Standing Order also does not subject all indigent people to pretrial confinement. Just as impoverished students living in wealthier districts received a better-funded education in *Rodriguez, id.* at 23, indigent arrestees who have a driver's license can obtain immediate release by using it as collateral. R. at 31. The Standing Order does not operate to the "peculiar disadvantage" of poor arrestees, so it creates no classification that warrants heightened scrutiny.

Unlike the rule in *Williams*, Calhoun's bail policy sets a maximum time frame within which all misdemeanor and traffic-offense arrestees must be released. The scheme in *Williams* was constitutionally defective because only indigent defendants faced imprisonment beyond the prescribed maximum sentence. 399 U.S. at 240-41. However, consistent with the assertion in *Rodriguez* that a mere disparity in quality did not warrant heightened scrutiny, the Supreme Court stated differing sentences for indigent and non-indigent offenders convicted of the same crime did not violate the Equal Protection Clause if both remained within the statutory maximum. *Id.* at 243. Here, all offenders are released within the 48-hour deadline the Standing Order sets for an indigency hearing. R. at 32. The Standing Order is not presumptively unconstitutional merely because it produces varying confinement periods within this limit.

Slicing pretrial confinement thinner to characterize it as an absolute deprivation misreads *Rodriguez* and *Williams*. A cheaper education likely eliminates some features a better-funded education provides. *See* R. at 11. Longer confinement takes hours outside jail away from the detained person. Yet *Rodriguez* stated an approach focusing on the relative costs of education

ignored the threshold question of whether the class suffered an absolute deprivation. 411 U.S. at 19. Similarly, *Williams* asserted imposing differing sentences within a statutory maximum does not violate the Equal Protection Clause. 399 U.S. at 243. In both cases, the Court would not find outright deprivations based on relative differences. Accordingly, adopting a narrower view of the deprived benefit would not have carried the day in *Rodriguez*, and it does not compel heightened scrutiny here. While some arrestees may remain in confinement longer than others, all are let go within 48 hours of their arrest, so none are deprived of pretrial release.

The consequences arrestees may face because they are confined do not change the analysis. 48 hours in confinement is no mere inconvenience, and it may have severe impacts. *See* R. at 17. However, a relatively longer prison sentence or a comparatively cheaper education may also cause significant harms. *See, e.g.*, *Rodriguez*, 411 U.S. at 112 (Marshall, J., dissenting) ("Education directly affects the ability of a child to exercise his First Amendment rights, both as a source and as a receiver of information and ideas, whatever interests he may pursue in life."). Yet the Court has never held harsh consequences are sufficient to subject the laws imposing them to heightened scrutiny. *See Williams*, 399 U.S. at 243; *Rodriguez*, 411 U.S. at 40. The same is true regarding a bail policy that results in limited confinement for some but ultimately grants release to all.

ii. Courts analyze fee requirements tied to criminal justice proceedings under a procedural due process balancing test.

While most fees are subject to rational basis review under the Equal Protection Clause, fees that regulate access to criminal justice processes fall into an exception to that general rule. *M.L.B.*, 519 U.S. at 124. Such fees implicate both equal protection and due process concerns. *Bearden*, 461 U.S. at 665. Policies implicating both principles cannot be analyzed through rigid frameworks. *Id.* at 666. Instead, the Court has adopted a balancing approach demanding "careful

inquiry into such factors as 'the nature of the individual interest affected, the extent to which it is affected, the rationality of the connection between legislative means and purpose, [and] the existence of alternative means for effectuating the purpose.'" *Id.* at 666-67 (internal citation omitted).

Although *M.L.B. v. S.L.J.* recognized cases involving fee requirements in the criminal justice context do not always apply rational basis review, it directed a balancing approach rather than heightened scrutiny. *M.L.B.* echoed *Bearden* and noted such cases involved both equal protection and due process issues. *M.L.B.*, 519 U.S. at 121. Noting no precise formula had been developed to analyze such cases, it proceeded to balance "the character and intensity of the individual interest at stake" with "the State's justification" for imposing a fee for obtaining a record necessary to appeal a parental rights termination. *Id.* at 120-21.

Bearden v. Georgia explains why both principles are applicable in these cases: a due process analysis generally applies to questions regarding whether the State treats criminal defendants fairly, but the State implicates the Equal Protection Clause when it invidiously denies a "substantial benefit" from one class of defendants that another can enjoy. *Id.* at 665. It follows that while some decisions in this context appear to rest on an equal protection analysis, *id.* at 665, those focusing on that principle involved absolute deprivations of post-conviction benefits.

For example, *Griffin v. Illinois*, 351 U.S. 12 (1956) held a defendant's ability to pay a fee to obtain a transcript necessary for appellate review of a conviction was not rationally related to their guilt or innocence. *Id.* at 18. The transcript was necessary to a defendant's appeal, so those who could not pay for it did not have that opportunity. *Id.* at 13-14. The case implicated both equal protection and due process concerns. *See id.* at 17. However, in finding the fee requirement was not rational, the Court held it violated the Constitution on equal protection grounds. *Id.* at 19

("There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.").

Applying *Griffin*, the Court in *Williams* found a policy that subjected only indigent defendants to imprisonment beyond the statutory maximum sentence for their offense violated the Constitution. 399 U.S. at 241. The Court was clear in finding withholding release within the established limit from poor offenders violated the Equal Protection Clause. *Id.* at 244.

However, cases involving pre-conviction benefits utilize a balancing approach that weights the government's interest against the individual's. In *United States v. Salerno*, 481 U.S. 739 (1987), the Court examined a portion of the Bail Reform Act of 1984 that allowed federal courts to detain arrestees until trial if they found no release conditions could assure community safety. *Id.* at 741. The Court viewed this policy through a due process lens and expressed that individual liberty interests could be subordinated to serve societal needs "where the government's interest is sufficiently weighty." *Id.* at 750-51. The Court rejected Salerno's contention that no government interest could justify detention until trial. *Id*. at 748.

In contrast to its treatment of the post-conviction rights implicated in *Griffin* and *Williams*, the *Salerno* Court gave great weight to both the Government's interest in preventing crime and the individual's liberty interest. *Id.* at 750. It proceeded to examine whether the statute included procedures to ensure reasonably accurate determinations regarding dangerousness. *Id.* at 751. This mirrors the procedural due process balancing test the Court crystalized in *Mathews v. Eldrige*, 424 U.S. 319, 335 (1976). *See Schall v. Martin*, 467 U.S. 253, 264-65, 274 (1984) (analyzing whether pretrial detention for juveniles is valid by weighing the State's interest in protecting the community from crime against the juvenile's interest in freedom before looking at whether there are sufficient procedural protections); *cf. Hamdi v. Rumsfeld*, 542 U.S. 507, 528-

29 (2004) (citing *Salerno* and *Schall* and declaring the *Mathews* balancing test is the "ordinary mechanism" used to balance government interests in detaining citizens and the individual interest in being free from pretrial detention).

The Standing Order regulates access to a pre-conviction benefit and does not preclude it for any category of defendant. Therefore, a due process balancing analysis is proper.

iii. The district court was incorrect to assert the Court's precedents direct heightened scrutiny.

[omitted for brevity]

b. If the Court applies a rigid equal protection analysis, rational basis review is the proper level of scrutiny.

The Equal Protection Clause traditionally grants states broad discretion to classify so long as its classification is reasonable. *Graham v. Richardson*, 403 U.S. 365, 371 (1971). Policies that do not involve a suspect classification like race, nationality, or alienage are reviewed for rationality. *Ortwein v. Schwab*, 410 U.S. 656, 660 (1973) (citing *Graham*, 403 U.S. at 371-72). Lines drawn based on wealth do not create a suspect classification. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 29 (1973). Thus, fees alleged to discriminate against poor persons do not generally receive heightened scrutiny. *Ortwein*, 410 U.S. at 660.

Laws that do not implicate a suspect classification may nonetheless receive heightened scrutiny if they restrict a fundamental right. *Rodriguez*, 411 U.S. at 40. However, a right is only fundamental where it is either implicitly or explicitly guaranteed by the Constitution. *Id.* at 33.

Requiring payment for immediate pretrial release implicates wealth, and this is not a suspect classification. Further, the Constitution does not contain a right to bail. Since no suspect classification or fundamental right is at issue, rational basis review applies to the Standing Order if the Court applies an equal protection framework.

i. Wealth classifications are not suspect.

[omitted for brevity]

ii. The Constitution precludes a fundamental right to pretrial release.

The Equal Protection Clause does not create substantive constitutional rights. *Rodriguez*, 411 U.S. at 33. Therefore, only rights the Constitution implicitly or explicitly guarantees are "fundamental" for the purpose of applying heightened scrutiny. *Id.* at 33. A benefit's importance relative to others or its societal significance do not compel heightened scrutiny. *See id.*

No part of the Constitution guarantees a right to pretrial release. The Eighth Amendment only assures the right to be free from excessive bail. U.S. Const. amend. VIII. However, it does not create an indisputable right to bail. *Salerno*, 481 U.S. at 752 ("This Clause, of course, says nothing about whether bail should be available at all.") Accordingly, the Court does not apply heightened scrutiny to policies restricting pretrial release.

United States v. Kras, 409 U.S. 434 (1973) underscores that heightened scrutiny only applies to fee requirements restricting constitutionally protected rights. The Court there distinguished from *Boddie v. Connecticut*, 401 U.S. 371 (1971), in which it found a fee requirement to obtain a divorce violated the Constitution. *Id.* at 380-81. The *Kras* majority noted someone seeking to dissolve a marriage and someone seeking to discharge their debts via bankruptcy stood in "materially different postures." 409 U.S. at 445. On the one hand, the associational interests intertwined with the marital relationship were of "fundamental importance . . . under our Constitution[]" and protected by a half-century of precedent. *See id.* (collecting cases). On the other, discharging debts, although important, did not "rise to the same constitutional level." *Id.* at 445.

Pretrial release is also not a constitutionally protected benefit. Unlike the interests associated with the marital relationship, the Constitution does not guarantee a fundamental right

to be free from pretrial confinement. In fact, decades of precedent approves policies that infringe on this interest. *See, e.g.*, *Schall*, 467 U.S. at 256-57 (approving pretrial confinement for juvenile defendants); *Salerno*, 481 U.S. at 741 (approving confinement until trial for dangerous defendants); *cf. Demore v. Kim*, 538 U.S. 510, 510 (2003) (approving detention during removal proceedings for deportable individuals with criminal convictions). Most telling is the Eighth Amendment's text. Its exclusion of any right to speedy bail or bail in all circumstances confirms the Constitution contains no right to pretrial release. U.S. Const. amend. VIII.

Fee requirements to access pretrial release do not create a suspect classification or restrict a fundamental right. Therefore, applying heightened scrutiny to a policy that allows quicker pretrial release for those who post money bail would force the Court to choose between establishing a new suspect classification or fashioning a constitutional right out of whole cloth. To avoid doing either, the Court should apply the rational basis framework it traditionally uses when analyzing policies implicating wealth if it holds on equal protection grounds.

2. A government policy providing for release of misdemeanor and traffic-offense arrestees within 48 hours is constitutional.

The City's policy satisfies constitutional requirements under a due process or equal protection analysis. It furthers a compelling regulatory interest in assuring defendants are present at trial. This outweighs its limited restriction on pretrial release. The Standing Order provides bright line standards that limit its burden on individuals and avert erroneous infringement.

If the Court applies an equal protection framework, the policy satisfies rational basis review. Given the increase in bench warrants the City issued when it could not detain arrestees, limited pretrial confinement is rationally related to a legitimate government end.

a. The City's policy satisfies constitutional due process requirements.

When a government conditions pretrial release in furtherance of a "sufficiently weighty" goal, even an individual's "strong interest in liberty" may be subordinated for societal needs. *United States v. Salerno*, 481 U.S. 739, 750-51 (1987). Preventative detention serves legitimate and compelling interests. *See id.* at 749. Thus, detention before conviction is permissible so long as the government's interest outweighs the individual's, *see id.* at 748-49, and the scheme contains adequate procedural safeguards. *Schall*, 467 U.S. at 264.

i. The Standing Order serves a legitimate and compelling regulatory interest.

The City's interest in assuring persons charged with a crime are present at trial "undoubtedly justifies" some manner of pretrial confinement. *Bell v. Wolfish*, 441 U.S. 520, 539 (1979). The Fifth Circuit has found this interest compelling. *Pugh v. Rainwater*, 572 F.2d 1053, 1056 (5th Cir. 1978) (en banc).

Widespread use of preventative detention helps confirm it serves legitimate and substantial state interests. *Schall*, 467 U.S. at 266. In *Schall*, the Court noted every state and Washington D.C. provided for preventative detention for juveniles in upholding the scheme at issue. *Id.* at 266-67. Money bail for adult offenders is also "basic to our system of law." *Schilb v. Kuebel*, 404 U.S. 357, 365 (1971). Years after the City enacted its Standing Order and Petitioner filed this suit, nineteen states continued to use bail schedules that standardized bond requirements like the City has. John P. Gross, *The Right To Counsel But Not The Presence of Counsel: A Survey of State Criminal Procedures For Pre-Trial Release*, 69 Fla. L. Rev. 831, 857 (2018). The ACLU's expressed goal to reduce, but not eliminate, pretrial confinement reflects the notion that some level of pretrial detention is necessary to achieve certain government objectives. *See The Administration of Bail by State and Federal Courts: A Call for Reform*

Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Sec. of the H.R. Comm. on the Judiciary, 116th Cong. 9 (2019) (statement of Brandon Buskey, Deputy Director for Smart Justice Litigation, American Civil Liberties Union).

Further, the City's interest in assuring accused persons are present at trial is regulatory, not punitive. An interest is regulatory if it was not enacted with a punitive purpose and is not excessive in relation to its stated goal. *Salerno*, 481 U.S. at 747 (internal citation omitted).

In *Salerno*, the Court deemed the Bail Reform Act a regulatory scheme and found it did not provide punishment before trial. *Id.* at 748. The legislative history made clear Congress did not intend pretrial confinement to serve as punishment for the accused. *Id.* at 747. Further, it did not inflict detention that was excessive in relation to Congress's goal. Pretrial confinement could only be sought in limited circumstances, arrestees were entitled to prompt detention hearings, and the Speedy Trial Act stringently capped the detention period. *Id.* (citing 18 U.S.C. § 3161). The legislature in *Schall* also did not indicate its preventative detention policy was punitive. *Schall*, 467 U.S. at 269. As in *Salerno*, it was compatible with the government's regulatory purpose in large part because it imposed a strict seventeen-day time limit on pretrial confinement. *Id.* at 270.

In contrast, post-sentencing detention serves a punitive purpose and is typically not a sufficient justification to burden individual interests. *Tate v. Short*, *Williams v. Illinois*, and *Bearden v. Georgia* are illustrative. *Tate* disallowed imprisonment where an indigent defendant could not pay a fine for theft imposed as punishment. 401 U.S. at 396-97. *Williams* prohibited requiring imprisonment beyond the statutory maximum because the defendant could not afford to pay a punitive fine. 399 U.S. at 236. *Bearden* prevented the State from revoking probation because a defendant could not pay his fine and restitution. 461 U.S. at 661-62. Defendants in all

cases could not serve the monetary punishment the state initially administered, so the government imposed confinement. The Court in these cases found ensuring a defendant faced adequate punishment was not a valid reason to abrogate liberty. *See, e.g.*, *Tate*, 401 U.S. at 399 (noting the State had constitutional alternatives to serve its interest in collecting fines).

Here, the Standing Order is consistent with a regulatory interest. It states a purpose to "permit the posting of bail without a delay associated with the 'First Appearance' within 48 hours of being confined to the Gordon County Jail . . . ." R. at 31-32. This decidedly disavows a punitive intent, and instead suggests the City wanted to implement a fairer policy. The Standing Order also contains a hard 48-hour cap on pretrial confinement, so detention under it is time-limited as it was under the policies permitted in *Salerno* and *Schall*. R. at 32. The Standing Order also requires a prompt hearing and prevents excessive confinement by providing for release on recognizance bond within the 48-hour limit even if the court cannot hold one. R. at 32. These features ensure the City's bail policy does not restrict pretrial release excessively in relation to its goal. Therefore, the Standing Order comports with a regulatory objective to assure arrestees are present for trial.

ii. The City's regulatory interest justifies a temporary restraint on pretrial release.

[omitted for brevity]

iii. The Standing Order contains procedural protections that adequately protect against erroneous deprivations.

[omitted for brevity]

b. If the Court applies an equal protection analysis, the policy survives rational basis review.

[omitted for brevity]

CONCLUSION

[omitted for brevity]

Applicant Details

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JD/LLB From	**Washington University School of Law** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=42604&yr=2014**
Date of JD/LLB	**May 23, 2023**
Class Rank	**10%**
Law Review/ Journal	**Yes**
Journal(s)	**Washington University Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Wiley Rutledge Moot Court Competition** **National Telecommunications and Technology Moot Court Competition** **National Appellate Advocacy Competition**

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June 20, 2023

The Honorable Morgan Christen
Old Federal Building
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Dear Judge Christen:

I am writing to apply for a clerkship in your chambers beginning in 2024 or for your next available position. I will be serving in Judge Lanny King's chambers in my home district of the Western District of Kentucky as his clerk for the 2023-2024 term.

I am a graduate of Washington University School of Law where I was ranked in the top 10% of my graduating class, participated in the school's premier national Moot Court team, and served as an Articles Editor for the Washington University Law Review. I knew before attending law school that I wished to serve by clerking at the trial and appellate levels, and I took every opportunity to prepare myself for that role. My coursework included Federal Courts, Remedies, Administrative Law, Criminal Procedure, and Evidence. I also sought out any opportunity to work on my writing, selecting notoriously writing-heavy courses such as Appellate Advocacy, and working in the school's clinics for multiple semesters. I also earned the privilege of an externship with Judge David Noce during my final semester. While in school I also worked at a St. Louis firm part-time to gain a private law perspective. My summers were spent both in public interest and large firm settings. I believe my experience and education would make me a valuable contributor in your chambers, and I would be honored to serve as your clerk.

Enclosed please find my résumé, transcript, and writing sample. The writing sample is my portion of a persuasive brief written for the Wiley Rutledge Moot Court Competition on the topic of standing under the Establishment Clause, which earned "Outstanding Brief" honors. The following individuals have submitted letters of recommendation, but welcome inquiries as well.

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I would welcome any opportunity to interview with you. Thank you for your time and consideration.

Sincerely,

Derek Story-Lee

DEREK STORY-LEE

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EDUCATION

WASHINGTON UNIVERSITY SCHOOL OF LAW St. Louis, MO
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- *Washington University Law Review*: Vol. 100, Articles Editor; Vol. 99, Staff Editor
- Research Assistant for Dean Russell K. Osgood, Academic Year 2021-2022
- Order of the Coif; Order of Barristers; Judge Amandus Brackman Moot Court Award
- Wiley Rutledge Moot Court Competition Champion – 2021; Quarterfinalist – 2022; Outstanding Brief Award – 2021, 2022; Outstanding Advocate Award – 2022
- National Appellate Advocacy Moot Court Competition Regional Champion – 2023; Best Advocate (2nd Place) – 2023; National Octo-finalist – 2023
- National Telecommunications and Technology Moot Court Competition Semifinalist – 2021; Best Brief Award – 2021
- Phi Alpha Delta: Justice/President (2021–2022); Professional Development Chair (2020–2021)
- Federalist Society: Vice President (August 2021–May 2022)
- First Amendment Clinic – Rule 13 Certified Student Attorney (Spring 2022)
- Civil Rights, Community Justice, & Mediation Clinic – Rule 13 Certified Student Attorney (Fall 2022)

THE GEORGE WASHINGTON UNIVERSITY Washington, D.C.
Master of Arts in Public Policy May 2017
Bachelor of Arts in Philosophy May 2015

SELECTED EXPERIENCE

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY Paducah, KY
Term Clerk for Judge Lanny King 2023-2024 term

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI St. Louis, MO
Judicial Extern for Judge David Noce January 2023–April 2023

- Drafted order ruling on Motion to Dismiss and Motion to Strike in federal § 1983 case.
- Researched and proposed updates to the Eighth Circuit's model jury instruction for Odometer Fraud.
- Drafted consolidated report and recommendation on twenty motions filed by defendant in criminal trial.

GOLDSTEIN & PRICE, L.C. St. Louis, MO
Law Clerk October 2022–April 2023

- Drafted pre-trial motions to compel, for sanctions, and for a continuance for cases pending in Federal Court.
- Researched and drafted subpoenas for domestication in foreign jurisdictions for cases in Missouri and Wisconsin.
- Researched and drafted memoranda on issues such as comparative tax law between potential venues for the purchase of vessels, company liability for maintenance and cure under the Jones Act, and the effect of third-party settlement on defendant liability and ability to seek indemnification from co-defendants.
- Reviewed and summarized hundreds of discovery materials and depositions for supervisor review and use.

O'MELVENY & MYERS LLP Washington, D.C.
Summer Associate, Return Offer Extended June 2022–August 2022

- Conducted research to prepare Congressional testimony regarding the Constitutional privileges of the Office of the Vice President.
- Drafted a demand letter to a government agency on an expedited timeline.
- Researched and drafted memoranda regarding attorney-client privileges for third-party reports and investigatory authority of Attorneys General.
- Advised counsel on the applicability of the Securities and Exchange Act section 12(b) to a proposed transaction.
- Researched novel common-law interpretation for a brief before the Supreme Court of the United States.
- Created an outline for a brief before the Virginia Court of Appeals and drafted a significant section thereof.

INSTITUTE FOR JUSTICE Arlington, VA
Dave Kennedy Fellow June 2021–August 2021

- Researched potential challenges to and drafted memoranda on State and Federal court decisions.
- Completed media training on attorney press interactions through mock interviews and press conferences.
- Analyzed the application of administrative regulations and drafted a recommendation document on the same.

HOGAN LOVELLS US LLP Louisville, KY
Compliance Coordinator November 2019–July 2020

- Maintained firm compliance with relevant European Union directives, ABA standards, and sanctions regulations.
- Managed team workflow, assignments, and communication with intra-firm stakeholders and partners.
- Conducted Client Due Diligence for new and long-standing firm clients.
- Conducted risk assessments for new clients and assigned risk scores.
- Participated in *ad hoc* committees and teams to address developments in regulations and law.

Compliance Analyst May 2019-November 2019
Junior Compliance Analyst August 2017–May 2019

THE FRANKLIN INSTITUTE FOR GOVERNMENT AND PUBLIC INTEGRITY Washington, D.C.
Charles Koch Institute Intern May 2014–August 2014

- Researched and drafted opinion editorials for placement in national publications either as the primary author or as a ghostwriter for the organization leadership.
- Drafted and disseminated summaries of news segments for distribution to outlets of both a regional and national audience.

SKILLS & INTERESTS

Competitive Ballroom Dancing, Science Fantasy (Star Wars), Dungeons and Dragons, and Martial Arts

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Washington University in St. Louis

Office of the University Registrar

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Student ID Number: 493859

Transcript Issued 06/14/2023 To:

RECIPIENT AS DESIGNATED BY STUDENT

Degrees Awarded:

CERTIFICATE IN PUBLIC INTEREST LAW MAY 10, 2023
JURIS DOCTOR MAY 10, 2023
GRADUATED WITH LAW HONORS: MAGNA CUM LAUDE MAY 10, 2023

Fall Semester 2020

LEGAL RESEARCH METHODOLOGIES I	LAW	W74 500D	0	CIP
LEGAL PRACTICE I: OBJECTIVE ANALYSIS AND REASONING (MOUL)	LAW	W74 500H	2.0	A
CONTRACTS (DEGEEST)	LAW	W74 501D	4.0	A-
PROPERTY (SACHS)	LAW	W74 507W	4.0	A+
TORTS (TAMANAHA)	LAW	W74 515D	4.0	A

Enrolled Units 14.0 Semester GPA 3.91 Cumulative Units 14.0 Cumulative GPA 3.91

Spring Semester 2021

LEGAL RESEARCH METHODOLOGIES II	LAW	W74 500E	1.0	HP
LEGAL PRACTICE II: ADVOCACY (MOUL)	LAW	W74 500J	2.0	A
CRIMINAL LAW (OSGOOD)	LAW	W74 502D	4.0	A
NEGOTIATION (TOKARZ/MERSMANN)	LAW	W74 503G	1.0	CR
CIVIL PROCEDURE (P. KIM)	LAW	W74 506G	4.0	A+
CONSTITUTIONAL LAW (CRUM)	LAW	W74 520R	4.0	A+

Enrolled Units 16.0 Semester GPA 3.95 Cumulative Units 30.0 Cumulative GPA 3.93

Fall Semester 2021

REMEDIES (LEVIN)	LAW	W74 567L	2.0	A-
EMPLOYMENT DISCRIMINATION (P. KIM)	LAW	W74 590F	3.0	A
APPELLATE ADVOCACY (FINNERAN/VAN OSTRAN)	LAW	W74 660B	3.0	B+
MOOT COURT (WILEY RUTLEDGE MOOT COURT COMPETITION)	LAW	W75 604S	1.0	CR
JURISPRUDENCE SEMINAR (TAMANAHA)	LAW	W76 796S	3.0	A
LAW REVIEW	LAW	W77 600S	1.0	CR

Enrolled Units 13.0 Semester GPA 3.70 Cumulative Units 43.0 Cumulative GPA 3.87

Spring Semester 2022

EVIDENCE (HARAWA)	LAW	W74 547N	3.0	B+
LEGAL PROFESSION (JOY)	LAW	W74 563U	3.0	B+
CRIMINAL PROCEDURE: ADJUDICATION (EPPS)	LAW	W74 580T	3.0	A
FIRST AMENDMENT CLINIC	LAW	W74 604C	6.0	P
LAW REVIEW	LAW	W77 600S	1.0	CR
SUPERVISED MOOT COURT	LAW	W79 500	1.0	CR

Enrolled Units 17.0 Semester GPA 3.58 Cumulative Units 60.0 Cumulative GPA 3.82

Keri A. Disch, University Registrar

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Washington University in St. Louis

Office of the University Registrar

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Student ID Number: 493859

Fall Semester 2022

FEDERAL COURTS (HOLLANDER-BLUMOFF)	LAW	W74 634G	4.0	A+
CIVIL RIGHTS, COMMUNITY JUSTICE & MEDIATION CLINIC	LAW	W74 769E	6.0	P
MOOT COURT (WILEY RUTLEDGE MOOT COURT COMPETITION)	LAW	W75 604S	1.0	CR
LAW REVIEW	LAW	W77 700S	2.0	CR

Enrolled Units 13.0 Semester GPA 4.00 Cumulative Units 73.0 Cumulative GPA 3.84

Spring Semester 2023

ADVANCED PERSUASIVE WRITING (FINN)	LAW	W74 523K	2.0	A+
ADMINISTRATIVE LAW (LEVIN)	LAW	W74 530A	3.0	A
JUDICIAL CLERKSHIP EXTERNSHIP	LAW	W74 654E	3.0	CR
PRETRIAL PRACTICE: CRIMINAL	LAW	W74 658Z	3.0	P
NATIONAL MOOT COURT TEAM	LAW	W75 606P	1.0	CR
LAW REVIEW	LAW	W77 700S	2.0	CR

Enrolled Units 14.0 Semester GPA 3.98 Cumulative Units 87.0 Cumulative GPA 3.85

Distinctions, Prizes and Awards

FL2020 DEAN'S LIST
SP2021 DEAN'S LIST
SP2021 HONOR SCHOLAR AWARD
FL2022 DEAN'S LIST
SP2023 ORDER OF BARRISTERS
SP2023 HONOR SCHOLAR AWARD
SP2023 DEAN'S LIST
SP2023 JUDGE AMANDUS BRACKMAN MOOT COURT AWARD
SP2023 ORDER OF THE COIF

********** **END OF TRANSCRIPT** **********

Keri A. Disch
Keri A. Disch, University Registrar

TO VERIFY: TRANSLUCENT GLOBE ICONS MUST BE VISIBLE WHEN HELD TOWARD A LIGHT SOURCE

Washington University in St. Louis
Office of the University Registrar
One Brookings Drive, Campus Box 1143, St. Louis, MO 63130-4899 www.registrar.wustl.edu 314-935-5959

Washington University in St. Louis is accredited by the Higher Learning Commission www.hlcommission.org, and its schools by various professional accrediting bodies. The CEEB code is 6929.

Transcript Nomenclature
Transcripts issued by Washington University are a complete and comprehensive record of all classes taken unless otherwise indicated. Each page lists the student's name and Washington University student identification number. Transcript entries end with a line across the last page indicating no further entries.

Degrees conferred by Washington University and current programs of study appear on the first page of the transcript. The Degrees Awarded section lists the date of award, the specific degree(s) awarded and the major field(s) of study.

Courses in which the student enrolled while at Washington University are listed in chronological order by semester, each on a separate line beginning with the course title followed by the academic department abbreviation, course number, credit hours, and grade.

Honors, awards, administrative actions, and transfer credit are listed at the end of the document under "Distinctions, Prizes and Awards" and "Remarks".

Course Numbering System
In general course numbers indicate the following academic levels: courses 100-199 = first-year; 200-299 = sophomore; 300-399 = junior; 400-500 = senior and graduate level; 501 and above primarily graduate level. The language of instruction is English unless the course curriculum is foreign language acquisition.

Unit of Credit/Calendar
Most schools at Washington University follow a fifteen-week semester calendar in which one hour of instruction per week equals one unit of credit. Several graduate programs in the School of Medicine and several master's programs in the School of Law follow a year-long academic calendar. The Doctor of Medicine program uses clock hours instead of credit hours.

Academic and Disciplinary Notations
Students are understood to be in good academic standing unless stated otherwise. Suspension or expulsion, i.e. the temporary or permanent removal from student status, may result from poor academic performance or a finding of misconduct.

Grading Systems
Most schools within Washington University employ the grading and point values in the Standard column below. Other grading rubrics currently in use are listed separately. See www.registrar.wustl.edu for earlier grading scales, notably for the School of Law, Engineering prior to 2010, Social Work prior to 2009 and MBA programs prior to 1998. Some programs do not display GPA information on the transcript. Cumulative GPA and units may not fully describe the status of students enrolled in dual degree programs, particularly those from schools using different grading scales. Consult the specific school or program for additional information.

Rating	Grade	Standard Points	Social Work
Superior	A+/A	4	4
	A-	3.7	3.7
	B+	3.3	3.3
Good	B	3	3
	B-	2.7	2.7
	C+	2.3	2.3
Average	C	2	2
	C-	1.7	1.7
	D+	1.3	0
Passing	D	1	0
	D-	0.7	0
Failing	F	0	0

Grade	Law Values (Effective Class of 2013)
A+	4.00-4.30
A	3.76-3.94
A-	3.58-3.70
B+	3.34-3.52
B	3.16-3.28
B-	3.04-3.10
C+	2.92-2.98
C	2.80-2.86
D	2.74
F	2.50-2.68

Additional Grade Notations			
AUD	Audit	NC/NCR/NCR#	No Credit
CIP	Course in Progress	NP	No Pass
CR/CR#	Credit	P/P#	Pass
E	Unusually High Distinction	PW	Permitted to Withdraw
F/F#	Fail	R	Course Repeated
H	Honors	RW	Required to Withdraw
HP	High Pass	RX	Reexamined in course
I	Incomplete	S	Satisfactory
IP	In Progress	U	Unsatisfactory
L	Successful Audit	W	Withdrawal
LP	Low Pass	X	No Exam Taken
N	No Grade Reported	Z	Unsuccessful Audit

(revised 11/2020)

TO TEST FOR AUTHENTICITY: Translucent icons of a globe *MUST* appear when held toward a light source. The face of this transcript is printed on green SCRIP-SAFE® paper with the name of the institution appearing in white type over the face of the entire document.

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THE GEORGE WASHINGTON UNIVERSITY WASHINGTON, DC

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Display Transcript

This is NOT an official transcript. It does not display second degrees.

The displayed GPA is rounded to the second decimal place. For Law School JD students, the official GPA is rounded to the third decimal place, and is available on your university transcript available from the Registrar's Office.

All earned credits, both GW and Non-GW, that appear on the transcript do not necessarily satisfy requirements for a degree. Consult with your advisor to determine progress toward a degree.

If you have questions about this transcript, please call (202) 994-4900.

Transfer Credit Institution Credit Transcript Totals

Transcript Data

STUDENT INFORMATION

Student Type: Continuing Student

Curriculum Information

Current Program
College: Columbian Coll of Arts & Sci
Major: Public Policy-Philo&Social Pol

DEGREE SOUGHT

Awarded: Bachelor of Arts **Degree Date:** 05/17/15

Curriculum Information

Primary Degree
Major: Philosophy:PublicAffairs Focus
Minor: Psychology

Not Cleared: Master of Arts **Degree Date:**

Curriculum Information

Primary Degree
Major: Public Policy-Philo&Social Pol

Awarded: Master of Arts **Degree Date:** 05/21/17

Curriculum Information

Primary Degree
Major: Public Policy-Philo&Social Pol

NON-GW HISTORY -Top-

2009-11: Advanced Placement Exam Credit

Subject	Course	Title	Grade	Credit Hours	Quality Points	R
CHEM	1111	General Chemistry	TR	4.000	0.00	
CHEM	1112	General Chemistry	TR	4.000	0.00	
ECON	1011	Principles of Economics	TR	3.000	0.00	
ECON	1012	Principles of Economics	TR	3.000	0.00	
ENGL	1099	VT-AP ENG LANG	TR	3.000	0.00	
ENGL	1310	Critical Readings in English	TR	3.000	0.00	
HIST	1011	World History, 1500-Present	TR	3.000	0.00	
HIST	1120	European Civ in World Context	TR	3.000	0.00	
HIST	1310	Intro to American History	TR	3.000	0.00	
HIST	1311	Intro to American History	TR	3.000	0.00	
PHYS	1011	General Physics I	TR	4.000	0.00	
PHYS	1012	General Physics II	TR	4.000	0.00	
PSC	1002	Intro-American Politics & Govt	TR	3.000	0.00	
PSYC	1001	General Psychology	TR	3.000	0.00	
STAT	1053	Intro-Stat in Social Science	TR	3.000	0.00	

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	0.000	0.000	49.000	0.000	0.00	0.00

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INSTITUTION CREDIT -Top-

Term: Fall 2011

Term Comments: Scholar, University Honors Program
College: Columbian Coll of Arts & Sci
Major: Arts & Sciences
Student Type: New Freshman Honors
Academic Standing: Good Standing
Additional Standing: Dean's List

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
HONR	1015	Main Campus	01	UW20Evolution of ModernThought	A	4.000	16.00		
HONR	1033	Main Campus	01	Scient.Reason&DiscoveryProsem	A-	4.000	14.80		
LSPA	1015	Main Campus	01	Japanese Swordsmanship	A-	1.000	3.70		
PHIL	2045	Main Campus	01	Introduction to Logic	A	3.000	12.00		
PSYC	1001	Main Campus	01	General Psychology	A-	3.000	11.10		

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	15.000	57.60	3.84
Cumulative:	15.000	15.000	15.000	15.000	57.60	3.84

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Term: Spring 2012

College: Columbian Coll of Arts & Sci
Major: Psychology
Student Type: Continuing Honor Student

Academic Standing: Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
HONR	1016	Main Campus	01	Origins&Evoltn of ModrnThought	A	4.000	16.00		
HONR	1034	Main Campus	01	Scient.Reason&DiscoveryProsem	A-	4.000	14.80		
LSPA	1040	Main Campus	01	Self Defense & Safety Skills	A	1.000	4.00		
PHIL	2132	Main Campus	01	Social & Political Philosophy	B+	3.000	9.90		
PSYC	2011	Main Campus	01	Abnormal Psychology	B	3.000	9.00		
SOC	1003	Main Campus	01	Intro to Criminal Justice	A	3.000	12.00		

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	18.000	18.000	18.000	18.000	65.70	3.65
Cumulative:	33.000	33.000	33.000	33.000	123.30	3.74

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Term: Fall 2012

College: Columbian Coll of Arts & Sci
Major: Psychology
Student Type: Continuing Honor Student
Academic Standing: Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
HONR	2125	Main Campus	01	Justice and the Legal System	C	3.000	6.00		
PHIL	2111W	Main Campus	01	History of Ancient Philosophy	A	3.000	12.00		
PHIL	2131	Main Campus	01	Ethics: Theory & Applications	B	3.000	9.00		
PHIL	3121	Main Campus	01	Symbolic Logic	A-	3.000	11.10		
PSTD	1010	Main Campus	01	Intro-PStd & Conflict Resolutn	C+	3.000	6.90		
STAT	1053	Main Campus	01	Intro-Stat in Social Science	B+	3.000	9.90		

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	18.000	18.000	18.000	18.000	54.90	3.05
Cumulative:	51.000	51.000	51.000	51.000	178.20	3.49

This is NOT an Official Transcript

Term: Spring 2013

College: Columbian Coll of Arts & Sci
Major: Psychology
Student Type: Continuing Honor Student
Academic Standing: Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R

HONR	2054W	Main Campus	01	Arts & World Cultures Prosem	A-	3.000	11.10
PSYC	2012	Main Campus	01	Social Psychology	B	3.000	9.00
PSYC	2014	Main Campus	01	Cognitive Psychology	B	3.000	9.00
PSYC	2101	Main Campus	01	Research Methods-Psychology	B+	3.000	9.90
PSYC	3154	Main Campus	01	Psychology of Crime & Violence	A	3.000	12.00

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	15.000	51.00	3.40
Cumulative:	66.000	66.000	66.000	66.000	229.20	3.47

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Term: Fall 2013

College: Columbian Coll of Arts & Sci
Major: Economics
Student Type: Continuing Honor Student
Academic Standing: Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
ENGL	1210	Main Campus	01	Intro to Creative Writing	W	3.000	0.00		
MATH	1231	Main Campus	01	Single-Variable Calculus I	W	3.000	0.00		
PHIL	3142W	Main Campus	01	Philosophy of Law	W	3.000	0.00		
PHIL	4192	Main Campus	01	Analytical Philosophy	W	3.000	0.00		
PHIL	4199	Main Campus	01	Readings and Research	W	2.000	0.00		
PHIL	6230	Main Campus	01	Ethical Issue-Policy Arguments	W	3.000	0.00		

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	17.000	0.000	0.000	0.000	0.00	0.00
Cumulative:	83.000	66.000	66.000	66.000	229.20	3.47

This is NOT an Official Transcript

Term: Spring 2014

College: Columbian Coll of Arts & Sci
Major: Economics
Student Type: Continuing Honor Student
Academic Standing: Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
HONR	2175	Main Campus	01	Difficult & Obscure Ideas	B+	3.000	9.90		
PHIL	4198	Main Campus	01	Kant's Critique of Pure Reason	F	3.000	0.00		
PHIL	6231	Main Campus	01	Seminar: Economic Justice	B+	3.000	9.90		
PHIL	6250	Main Campus	01	Topics in Health Policy	A	3.000	12.00		

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	12.000	9.000	9.000	12.000	31.80	2.65
Cumulative:	95.000	75.000	75.000	78.000	261.00	3.35

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Term: Fall 2014

College: Columbian Coll of Arts & Sci
Major: Economics
Student Type: Continuing Honor Student
Academic Standing: Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
HONR	4199	Main Campus	01	Honors Capstone Experience	P	1.000	0.00		
PHIL	3142W	Main Campus	01	Philosophy of Law	B+	3.000	9.90		
PHIL	4198	Main Campus	01	Prosem:Hume'sSkepticalMetaphys	B-	3.000	8.10		
PHIL	4199	Main Campus	01	Readings and Research	A	3.000	12.00		
PHIL	6290	Main Campus	01	Liberalism and Social Policy	A	3.000	12.00		

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	13.000	13.000	13.000	12.000	42.00	3.50
Cumulative:	108.000	88.000	88.000	90.000	303.00	3.37

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Term: Spring 2015

College: Columbian Coll of Arts & Sci
Major: Philosophy:PublicAffairs Focus
Student Type: Continuing Honor Student
Academic Standing: Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
ENGL	1210	Main Campus	01	Intro to Creative Writing	C+	3.000	6.90		
PHIL	2136	Main Campus	01	Contemporary Issues in Ethics	C	3.000	6.00		
PHIL	4198	Main Campus	01	Mill: Freedom and Feminism	A	3.000	12.00		
PHIL	6242	Main Campus	01	Philosophy,Law & Social Policy	A	3.000	12.00		

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	12.000	12.000	12.000	12.000	36.90	3.08
Cumulative:	120.000	100.000	100.000	102.000	339.90	3.33

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Term: Fall 2015

College: Columbian Coll of Arts & Sci
Major: Public Policy-Philo&Social Pol
Student Type: Old Grad New Degree Program
Academic Standing: Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
PHIL	6998	Independent Research 1	02	Thesis Research	CR	3.000	0.00		
PPPA	6002	Main Campus	02	Research Methods/Applied Stat	A-	3.000	11.10		
PPPA	6011	Main Campus	02	Introduction to Public Policy	B+	3.000	9.90		

Term Totals (Graduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	9.000	9.000	9.000	6.000	21.00	3.50
Cumulative:	9.000	9.000	9.000	6.000	21.00	3.50

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Term: Spring 2016

College: Columbian Coll of Arts & Sci
Major: Public Policy-Philo&Social Pol
Student Type: Continuing Student
Academic Standing: Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
ECON	6217	Main Campus	02	Survey of Economics I	B+	3.000	9.90		
PHIL	6202	Independent Research 1	02	Readings and Research	A	3.000	12.00		
PPPA	6006	Main Campus	02	Policy Analysis	B+	3.000	9.90		

Term Totals (Graduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	9.000	9.000	9.000	9.000	31.80	3.53
Cumulative:	18.000	18.000	18.000	15.000	52.80	3.52

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Term: Fall 2016

College: Columbian Coll of Arts & Sci
Major: Public Policy-Philo&Social Pol
Student Type: Continuing Student
Academic Standing: Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
PHIL	6236	Main Campus	02	Moral Status	B-	3.000	8.10		

Term Totals (Graduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	3.000	3.000	3.000	3.000	8.10	2.70
Cumulative:	21.000	21.000	21.000	18.000	60.90	3.38

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Term: Spring 2017

College: Columbian Coll of Arts & Sci
Major: Public Policy-Philo&Social Pol
Student Type: Continuing Student
Academic Standing: Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
UNIV	0982	Main Campus	02	Continuous Enrollment	CE	0.000	0.00		

Term Totals (Graduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	0.000	0.000	0.000	0.000	0.00	0.00
Cumulative:	21.000	21.000	21.000	18.000	60.90	3.38

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TRANSCRIPT TOTALS (UNDERGRADUATE) -Top-

Level Comments: University Honors Program Scholar ADMITTED TO BA/MA DEGREE PROGRAM (FALL 2013)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	120.000	100.000	100.000	102.000	339.90	3.33
Total Non-GW Hours:	0.000	0.000	49.000	0.000	0.00	0.00
Overall:	120.000	100.000	149.000	102.000	339.90	3.33

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TRANSCRIPT TOTALS (GRADUATE) -Top-

Level Comments: ADMITTED TO BA/MA DEGREE PROGRAM (FALL 2013)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	21.000	21.000	21.000	18.000	60.90	3.38
Total Non-GW Hours:	0.000	0.000	0.000	0.000	0.00	0.00
Overall:	21.000	21.000	21.000	18.000	60.90	3.38

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RELEASE: 8.7.1

Washington University in St. Louis
SCHOOL OF LAW

May 16, 2022

The Honorable Morgan Christen
Old Federal Building
605 West Fourth Avenue, Suite 252
Anchorage, AK 99501-2248

RE: Recommendation for Derek Story-Lee

Dear Judge Christen:

I write in enthusiastic support of Derek Lee's application for a clerkship in your chambers. Derek was a student in my Legal Practice class last academic year. He is an impressive critical thinker and displays the analytical aptitude, intellectual curiosity, and work ethic to excel in any legal setting.

Legal Practice class introduces first year law students to key lawyering skills by simulating representation of a variety of clients in a way that calls on the students to conduct legal research, interview witnesses, draft legal documents, etc. Last year I met with Derek for class twice a week in a small group of twenty-nine students. Further, students had two required research conferences with me during the year where they played the role of a junior attorney orally reporting on research results. They also had the option of meeting in additional individual conferences with me before each graded paper was due.

Derek was always thoroughly prepared for class. He consistently contributed to discussions and class activities, and he consistently demonstrated a genuine interest in learning the law. During the required research conferences, he dug deeply into the research and analysis in a manner that many first year students do not. During those research conferences, Derek's presentations were thorough and professional. And even though his written work product consistently earned high marks, he took full advantage of opportunities to meet in the optional individual conferences to work on achieving ongoing improvement in his legal practice skills. He routinely came to our meetings with a prepared list of questions, which facilitated the most effective and efficient use of our time together.

Further, I knew Derek to otherwise go above and beyond. For example, for an oral argument exercise engaged in by the first year class I needed several students to argue twice to equalize advocates on each side in the matter. Derek readily volunteered. I am confident that his natural inclination to help will result in effective collaboration with, and support of, others in your chambers. As another example, I found Derek to be a natural leader. Last year I held a group open office hour two days before each graded paper was due.

Derek always attended and often led the charge in asking questions during this session. This was more challenging last year than in those past due to the sessions occurring remotely instead of in person, but Derek still reliably asked many questions that were to the benefit of all attending.

During the fall semester, Derek's grade was based primarily on drafting two substantial office memoranda, one of which involved a research project. During this second semester, the grade was based primarily on two court briefs, one of which also included an involved research project. I know from our individual conferences that Derek sometimes found word count limits challenging (as did his classmates and as was intended), such that he spent hours developing critical editing skills in meeting the limits with his final papers. Ultimately, Derek's excellent reasoning skills, concise writing, and attention to detail earned him an A in Legal Practice for each of the fall and spring semesters.

In working with Derek in class and numerous individual conferences, I have come to know him as a personable, dependable individual who is serious, but has a quick sense of humor. He works well with others because he is sincere and helpful. He has a tenacious, seemingly tireless work ethic, and he was unfailingly engaged and professional last year even in the face of the inevitable stresses of law school and the pandemic times. Given such qualities, along with his excellent lawyering skills and strong interest in the legal process, I believe Derek Lee will contribute much as a law clerk and highly recommend him. If you have any questions about this letter, please do not hesitate to contact me.

Best,

/s/

Jane Moul
Professor of Practice

Washington University School of Law
One Brookings Drive, MSC 1120-250-258
St. Louis, MO 63130
(314) 935-6420

Washington University in St. Louis
SCHOOL OF LAW

March 28, 2022

The Honorable Morgan Christen
Old Federal Building
605 West Fourth Avenue, Suite 252
Anchorage, AK 99501-2248

RE: Recommendation for Derek Story-Lee

Dear Judge Christen:

Derek Lee was a student in my Jurisprudence Seminar last fall, and in torts the year before. In both courses, he was an outstanding student, with a penetrating, quick intellect and enthusiasm for law.

The Jurisprudence Seminar is a survey course that covers topics from natural law, to liberal theory (Locke, Mill, Rawls), to the rule of law, to law and economics, and other theoretical perspectives issues in law. The class is known to be challenging and the students who enroll are among our top students. They are required to write four papers during the semester, which I grade anonymously. Mr. Lee's papers were original, sophisticated, and thoughtful. These qualities are reflected in comments I wrote at the top of various papers: "Very smart and interesting essay!" "Well written and argued!" "Ambitious." Mr. Lee received one of the highest grade in a class with many of our best students. In addition, he made a major contribution to the class discussion because he was willing to express views and defend positions that were not always shared by the majority of the students. He always articulated his view in a reasoned, civil fashion, and was very effective in getting others to consider his position seriously. I was grateful to have Mr. Lee in the class because his presence and willingness to speak provided a much richer discussion of the issues.

Mr. Lee also made a strong impression on me in torts. The class was conducted entirely through Zoom because of Covid 19 restrictions. Nonetheless, Mr. Lee stood out from the outset and throughout the semester through his consistently astute observations. Even on Zoom, his interest in law and his thoughtfulness were evident. He was the most engaged student in the group. As I expected, Mr. Lee performed very well on the torts final. My torts exams are detailed fact patterns based on real events, which students are required to analyze, raising causes of action and defenses. The exam involved an indoor gathering that resulted in an outbreak of Covid infections, illnesses, and a number of deaths. The exam was especially complex because this is a novel situation and there are solid arguments to be made on both sides. Mr. Lee's answer was outstanding. His analysis was systematic and comprehensive, earning a raw score in the top 5 percent of the class.

Overall, Mr. Lee is in the top 10% of the second year class. This is a noteworthy achievement given the high caliber of our students. Washington University School of Law is ranked 16th in the country by US News, and the median LSAT score of our recent entering classes is among the top 10 law schools in the country. Many of our students are admitted to top 10 law schools, but instead choose to matriculate at WashULaw owing to full scholarships we offer to attract the best students. I provide this information to put Mr. Lee's accomplishment in context—his ability places him among the brightest law students in the country.

Mr. Lee has had a number of quality work experiences. He worked at the Cato Institute and the Institute for Justice; and he worked for several years in the compliance office at Hogan Lovells in Louisville, rising to the position of Compliance Coordinator. Last summer, he worked as a Summer Associate at O'Melveny & Myers in Washington, D.C. His academic background (a degree in philosophy) and work experiences reveal a commitment to learning, to law, and to larger public issues. An additional benefit of his work experiences is that Mr. Lee's writing and analytical abilities are already very polished.

We have had a number of conversations outside of class. Mr. Lee is personable, bright, and affable. He is responsible, gets along with others, and performs well. I'm confident that he will be a pleasure to work with in Chambers.

Mr. Lee is seeking a judicial clerkship because he wants to develop his legal skills and work at the highest level of the profession. I have no doubt that Mr. Lee will go on to be an excellent lawyer, and will pursue a career that contributes to the profession and society. For these reasons, I urge you to provide him with the opportunity to serve as your law clerk. His research and writing will be first rate, he will be careful and strive to get things right, and the clerkship experience will significantly enhance his development as a lawyer. If you have any questions, please email me at btamanaha@wustl.edu or at my cell 718-930-2817.

Thank you for considering my recommendation.

Best,

/s/

Brian Z. Tamanaha
John S. Lehmann University Professor

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O'Melveny

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File Number:

January 1, 2023

Greg Jacob
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gjacob@omm.com

To Whom It May Concern:

I write to enthusiastically recommend Derek Lee for a judicial clerkship. I am a partner at the law firm of O'Melveny & Myers LLP, and I served as Counsel to Vice President Mike Pence from March 2020 through January 2021.

While serving as a 2021 summer associate in our Washington, D.C. office, Derek was my assigned mentee, and he further performed substantive work directly for me on a highly sensitive legal research project. Derek's legal research, clarity of writing, and analytical ability were all well above the level of most law students. I would rate the quality of his work as comparable to what I would typically expect from a third or fourth year O'Melveny associate, most of whom have themselves clerked. Derek was also highly conscientious in getting his work completed on a tight deadline, and good about communicating to ensure that his final work product met expectations.

The specific project Derek worked on for me related to my former role as Counsel to the Vice President. During the summer of 2021, I was required to provide live testimony to the "Select Committee to Investigate the January 6th Attack on the United States Capitol." In addition, as Vice President Pence's representative for handling record requests to the National Archives seeking Vice Presidential Records, I was required to quickly respond to numerous requests for documents, and also to make associated privilege determinations, on an expedited basis, and in a politically fraught environment that required interaction not only with the National Archives, but also with the current White House and with representatives of former President Trump. Vice Presidential Records are not a well-defined category of documents under the Presidential Records Act ("PRA"), and the specific circumstances of January 6—a day on which Vice President Pence served in his constitutionally designated role as President of the Senate, an Article I function outside the Executive Branch—gave rise to highly complicated legal questions, both concerning the application of relevant constitutional privileges, and the interpretation of regulations and administrative guidance issued by the National Archives. I asked Derek to examine specific questions that required research and analysis involving both constitutional and administrative law, which needed to be completed very quickly to inform strategic and appropriate interactions on pending record requests. The memorandum Derek wrote was thorough, thoughtful, and comprehensive. Derek also demonstrated during oral follow-up conversations that he had absorbed and thought through a variety of relevant ancillary issues, and our conversations helped inform the specific approach I ultimately chose to take to certain pending requests.

O'Melveny

I am confident Derek would generate similarly high-quality work as a judicial clerk. I will note that I also found Derek's intellectual curiosity and knowledge base made for very engaging conversations on subjects unrelated to his assigned work. I am confident Derek would be an excellent addition to any chambers, and I am personally hopeful that he will one day accept O'Melveny's standing offer so that I have the opportunity to work with him again. Please do not hesitate to call me if I can provide you any further information about Derek.

Sincerely,

Gregory F. Jacob

OMM_US:80974531.1

Washington University in St. Louis
SCHOOL OF LAW

April 12, 2021

The Honorable Morgan Christen
Old Federal Building
605 West Fourth Avenue, Suite 252
Anchorage, AK 99501-2248

RE: Recommendation for Derek Story-Lee

Dear Judge Christen:

I write to recommend my student, Derek Lee, for a clerkship in your chambers. I was fortunate to get to know Derek as a student in my Property Law class in the fall of 2020. Not only did Derek do well in the class, but he impressed me with his analytical reasoning skills. I know he would be an asset to your chambers.

Derek has given a lot of thought to the idea of a clerkship. As he describes it, clerking – and specifically "learning from a judge" – is "the single best learning experience I can imagine for improving the craft of practicing law. From that position I would be able to see not only how a court functions, but how judges think and reason through problems." Derek hopes to begin his career in private practice but eventually transition into public interest work of some type, and he views clerking as an important part of his public service goals.

In Property Law, Derek participated in class often. He performed well when cold-called, and when volunteering to contribute, his comments were thoughtful and clear. He often attended office hours, and his intellectual curiosity was apparent. He was consistently interested in the course material for its own sake, rather than only for exam preparation purposes.

It was not a surprise when Derek received the highest grade in my class on the final exam. He received the highest scores in the class on both questions involving elements of policy analysis, and received nearly the highest score on the doctrinal issue-spotter. His exam was comprehensive and detailed.

His performance in the class was more impressive when the difficult circumstances of the Fall 2020 semester are considered: we held class in a hybrid form (where some students were in person and others on Zoom) most days, but were sometimes all on Zoom. Under these circumstances, he adjusted very well to the law school environment and has excelled in his classes.

Please let me know if you need any more information about Derek. I can be reached by email at rsachs@wustl.edu or phone at (314)-935-8557.

Best,

/s/

Rachel Sachs
Associate Professor of Law

Washington University School of Law
One Brookings Drive, MSC 1120-250-258
St. Louis, MO 63130
(314) 935-6420

Washington University in St. Louis
SCHOOL OF LAW

July 19, 2021

The Honorable Morgan Christen
Old Federal Building
605 West Fourth Avenue, Suite 252
Anchorage, AK 99501-2248

RE: Recommendation for Derek Lee

Dear Judge Christen:

It is a pleasure for me to recommend as a future clerk Derek Lee, who is completing his second year at Washington University School of Law. I am the Dean and visiting Professor of Law (since 2011) at Washington University School of Law. Before that, I was the President of Grinnell College (1998-2010), and, prior to that, the Dean (1988-1998) and a faculty member (1980-1998) at Cornell Law School.

I first got to know Derek when I had him as a student in a large section of our basic Criminal Law course (the substantive law of crimes with some criminal procedure) during the spring of 2021. I got to know Derek very well in the class for several reasons. First, he wrote an excellent mid-semester paper on the controversial topic of the proper scope of qualified immunity for police officers. It was a measured and intelligent paper on a topic that is the subject of lots of heated and not informed discussions. In addition to this paper Derek was an active and intelligent participant in class discussion and visited me several times during office hours. During one of those meeting he told me that he had no idea how to prepare for the examination in my course so we talked about it and during the class review session it was obvious he was preparing well. He wrote a terrific final examination and received one of the highest grades in the course (A). His exam was comprehensive, erudite and beautifully composed. After the semester ended Derek was elected (based on his writing) as an Editor of our flagship *Law Review*.

I recommend Derek without any reservation. He is both extraordinarily hardworking and sharp. Derek is mature and personable and would be a good person to have in chambers.

If anyone would like to speak with me about this excellent potential clerk give me a call at 641-821-3712.

Best,

/s/

Russell K. Osgood
Dean
Professor of Law

Washington University School of Law
One Brookings Drive, MSC 1120-250-258
St. Louis, MO 63130
(314) 935-6420

WRITING SAMPLE

The attached writing sample is a brief submitted for Washington University's 2022 Wiley Rutledge Moot Court Competition. This brief was completed in teams of two, but I have only included portions where I was the sole author and editor. In the brief, I argue that a student has standing under the Establishment Clause when his football coach leads the team in prayer before a game.

No. 22-105

In the

Supreme Court of the United States

MAUREEN MOXON, AS NEXT FRIEND OF K.M., A MINOR CHILD,

Petitioner,

v.

WEST CANAAN UNIFIED SCHOOL DISTRICT,

Respondent.

On Writ of Certiorari to

the United States Court of Appeals

for the Twenty-First Circuit

BRIEF FOR PETITIONER

Washington University School of Law

Wiley Rutledge Moot Court Competition

Attorneys for the Petitioner

Team 15

QUESTIONS PRESENTED FOR REVIEW

1. Whether the parent of a student who refuses to participate in a prayer led by an on-duty public school employee has standing, as next friend of her child, to assert a violation of the Establishment Clause; and
2. [REDACTED]

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TABLE OF AUTHORITIES

[REDACTED]

OPINIONS BELOW

[REDACTED]

JURISDICTIONAL STATEMENT

[REDACTED]

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

[REDACTED]

STATEMENT OF THE CASE

A. Statement of Facts

K.M. is a 15-year-old student at West Canaan High School. R. at 1. West Canaan high school is a part of a publicly funded school district within the state of Texasota. R. at 1. K.M. lives with his mother, Maureen Moxon. R. at 1. K.M. is agnostic. R. at 1. K.M. is a member of the West Canaan freshman football team. R. at 2. Since 1992, Bud Kilmer ("Coach Kilmer") has served as the coach of the West Canaan football team. Coach Kilmer has led his students in reciting the Lord's prayer before each game since 2001. When K.M. first experienced Coach Kilmer's pregame prayers, he joined his teammates in kneeling but did not recite the prayer. R. at 2.

After the second game, K.M. expressed his discomfort in participating in the religious activity and in Coach Kilmer leading it. R. at 2. K.M. requested that Coach Kilmer refrain from leading the students in prayer. R. at 2. Stating that he had "been 'leading this team in prayer since [K.M.] was in diapers'" Coach Kilmer denied K.M.'s request. R. at 2. Coach Kilmer also explained, "he did not think it would be fair to the other players on the team who wished to join in the prayer if he were to stop reciting it." R. at 2. K.M. then requested to abstain from kneeling

during the prayer. Coach Kilmer obliged but warned, "it would be best for team unity" if K.M. joined in the prayer as he had in the past. R. at 2.

Before the third and fourth games of the season, K.M. knelt during Coach Kilmer's prayer but did not recite it. R. at 2. Starting with the fifth game of the season, K.M. did not kneel as Coach Kilmer led the team in prayer. R. at 2. After one such game, K.M. was confronted and ridiculed by teammates for not participating in the pregame prayer. R. at 2. K.M. was asked if he was a "heathen," prompting laughter from several other teammates. R. at 2.

Ms. Moxon sent a letter on October 23, 2021, to the principal of West Canaan, the superintendent, and Coach Kilmer reiterating K.M. 's request that Coach Kilmer refrained from leading the pregame prayer. R. at 2. The letter also asserted that Coach Kilmer's practice of leading the pregame prayer violated the First Amendment's Establishment Clause. R. at 2. Ms. Moxon's letter was one of many since 2002 complaining about Coach Kilmer's pregame prayers. R. at 5. West Canaan refused Ms. Moxon's request, claiming Coach Kilmer's pregame prayer did not violate the Establishment Clause. R. at 2.

B. Procedural History

On March 15, 2022, Ms. Moxon filed for an injunction under 42 U.S.C. § 1983 (1979 against West Canaan Unified School District on behalf of her son, for West Canaan's policy of permitting Coach Kilmer to lead students in prayer in violation of the Establishment Clause of the First Amendment. R. at 3. The District Court consolidated the hearing for preliminary injunction with a trial on the merits and granted the injunction, ordering West Canaan to instruct Coach Kilmer to refrain from leading his pregame prayers with students. R. at 8. The District Court found that Ms. Moxon could bring a suit for violation of her son's rights under the Establishment clause, that West Canaan's policy violated the Establishment Clause and would cause irreparable harm if

not enjoined. R. at 6–7. West Canaan appealed. R. at 9. The Court of Appeals reversed, agreeing with the District Court on the issue on standing but not the Establishment Clause issue. R. at 13. Plaintiff timely filed a petition for certiorari, which this Court granted on both issues on August 31, 2022. R. at 16.

SUMMARY OF THE ARGUMENT

[REDACTED]

ARGUMENT

I. West Canaan's Policy of Permitting Coach Kilmer to Lead Students in Prayer Causes a Legally Cognizable Injury to K.M. Sufficient to Confer Standing

K.M. suffered a legally cognizable injury which is fairly traceable to West Canaan and is certain to be redressed by a favorable ruling in the federal courts. The judicial power of the United States extends to "Cases" and "Controversies," and the doctrine of standing serves to "identify those disputes which are appropriately resolved through the judicial process." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (citing *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)). Standing is both a Constitutional and prudential doctrine. *Lujan*, 504 U.S. at 560. The purpose of standing is "related only to whether the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of resolution." *Ass'n of Data Processing Serv. Orgs. v. Camp*, 397 U.S. 150, 151–52 (1970). To show standing, plaintiffs must allege that they have "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues." *Baker v. Carr*, 369 U.S. 186, 204 (1962).

This Court has interpreted the "irreducible constitutional minimum" of standing to involve three factors. *Lujan*, 504 U.S. at 560. Plaintiffs must have suffered an "injury in fact," which is "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent." *Id*. That injury must be "fairly traceable to the challenged action of the defendant" and "likely . . . [to be] redressed by a favorable decision." *Id.* at 560–61 (internal citations omitted). Determination of standing is reviewed *de novo*. *Defs. of Wildlife v. Percisepe*, 714, F.3d 1317, 1323 (D.C. Cir. 2013). Plaintiffs need not prove the factors on the merits, but only assert, by the standard of proof of the stage of litigation at issue, factors that if proven would convey standing.

See Ass'n of Data Processing, 397 U.S. at 153 (distinguishing between merit arguments and standing arguments).

It is clear that West Canaan's policy of permitting Coach Kilmer to lead students in prayer during his official duties is the cause of K.M.'s alleged injury. It is clear that issuing the requested injunction would redress K.M.'s injury. It is clear that Maureen Moxon, as the next friend of the minor child K.M. can bring his claims on his behalf. The only reason K.M. would not have standing is if his unwanted, direct, coercive exposure to religious activity by a government entity, which violates his First Amendment rights under the Establishment Clause, did not confer an "injury in fact".

K.M.'s exposure to unwanted, direct, coercive religious activity by a government entity caused him a legally cognizable injury. K.M.'s injury is concrete and particularized, not a generalized grievance. *See ACLU of Ga. v. Rabun Cnty. Chamber of Com.*, 698 F.2d 1098, 1109 (11th Cir. 1983) (stating plaintiffs demonstrated an individualized injury by alleging direct personal contact with offensive action alone). Coach Kilmer has led prayer in the locker room of a public school's football team of which K.M. is a member. R. at 1–2. K.M. has expressed his preference to not be part of these prayers, and multiple parents have expressed the inappropriate nature of a public-school coach leading prayer with students to West Canaan. R. at 2. K.M.'s injury is also both actual and imminent, as Coach Kilmer has indicated that he has been "leading this team in prayer since [K.M.] was in diapers" and is "not going to stop now." R. at 2. Therefore, the only reason K.M. would not have suffered an injury in fact is if the violation of his rights under the Establishment Clause was not a legally protected interest.

A. K.M.'s Unwanted, Direct Exposure to West Canaan's Establishment of Religious Doctrine Constitutes an Injury in Fact

K.M. suffered a legally cognizable injury when he was directly exposed to an unwanted government-sponsored display of religion. This Court's precedents set out three ways plaintiffs can show standing in Establishment Clause cases: taxpayer standing, suffering a direct harm, and being denied benefits. *Montesa v. Schwartz*, 836 F.3d 176, 194 (2d Cir. 2016) (citing *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 129–30 (2011)). Direct exposure cases occur in two contexts, when government enacts religious laws and when citizens are exposed to religious expressions or messages sponsored or promoted by the government. *Montesa*, 836 F.3d at 196. Plaintiffs attest an injury for the purpose of standing when they are directly and immediately exposed to religious government speech, which conveys a "direct and personal stake in the controversy." *Id.* at 197.

i. Individuals have a legally cognizable interest in not being directly exposed to government-sponsored religious expression

Direct exposure to government-sponsored religious expression works a concrete injury on individuals, as has been recognized by this and inferior courts. The Establishment Clause "does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce nonobserving individuals or not." *Engel v. Vitale*, 370 U.S. 421, 430 (1962). The prevailing interpretation of *Engel* and other Establishment Clause cases is that standing only requires direct and unwelcome personal contact with the alleged establishment of religion. *ACLU Neb. Found. v. City of Plattsmouth, Neb.*, 358 F.3d 1020, 1029–30 (8th Cir. 2004) (collecting cases and concurring with decisions from the Fourth, Sixth, Seventh, Tenth, and Eleventh Circuits). By expressing that coercion is not necessary for government religious speech to cause an injury, this Court implies

that mere enactment and exposure is sufficient. *See, e.g.*, *Lee v. Weisman*, 505 U.S. 577, 604 (1992) (Blackmun, J. concurring) ("[P]roof of government coercion is not necessary to prove an establishment clause claim, [but] it is sufficient."), *Marsh v. Chambers*, 463 U.S. 783, 803 (1983) (Brennan, J. dissenting) ("The right to conscience, in the religious sphere, is not only implicated when the government engages in direct or indirect coercion.").

This does not mean that citizens can establish standing based only on an academic or ideological objection to government religious messages, but K.M. has shown far more than this. *ACLU Neb. Found.*, 358 F.3d at 1029. As required by *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464 (1982), K.M. has alleged a "direct and personal subjection to a government establishment of religion." *See Suhre v. Haywood Cnty.*, 131 F.3d 1083, 1086 (4th Cir. 1997) (interpreting *Valley Forge* to classify direct contact with unwelcome religious exercise as a personal injury). As this Court has made clear, proximity to the violative message is the critical fact to establish standing under the Establishment Clause. *Suhre*, 131 F.3d at 1087 (analyzing *School District of Abington Township, Pennsylvania v. Schempp*, 374 U.S. 203 (1963), and *Valley Forge*).

Many Establishment Clause cases alleging a direct exposure to government religious messages do not address standing, assuming direct exposure is enough and moving to the merits. This Court has done so on numerous occasions. *See, e.g.*, *Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct 2067, 2090 (2019); *McCreary Cnty v. ACLU of Ky.*, 545 U.S. 844 (2005); *Van Orden v. Perry*, 545 U.S. 677 (2005). *But see Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 91 (1998) ("[D]rive-by jurisdictional rulings of this sort . . . have no precedential effect."). Even when it has been addressed, this and lower courts have devoted minimal discussion to the question of standing when a direct and proximate exposure has been alleged. *See Schempp*, 374 U.S. at 224 n.

9 (relegating discussion of standing to a footnote, expressing that the interests of parents and school children directly exposed to school-sponsored bible readings "surely suffice" to convey standing), *ACLU of Ohio Found. v. Ashbrook*, 375 F.3d 484, 489–90 (6th Cir. 2004) (dedicating a short paragraph with no analysis to the question of standing). Silence on the question of standing is a determination that the plaintiff has standing since federal courts have an independent obligation to examine jurisdictional issues on appeal. *See United States v. Hays*, 515 U.S. 737, 742 (1995). By proceeding to the merits, these cases should be read as endorsing the direct exposure test—and not all rely on the *Lemon* test abandoned in *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2019). *See, e.g.*, *Schempp*, 374 U.S. 203 (1963) (decided before *Lemon v. Kurtzman*, 403 U.S. 602 (1971)).

ii. Exposure to government religious speech confers an injury in fact even if that exposure is voluntary

Several courts have expressed that exposure to monuments and other displays of religious messaging causes an injury sufficient to convey standing, even though it is possible to avoid those displays. *See, e.g.*, *Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct 2067 (2019) (exposure to Latin Cross memorial analyzed on the merits without discussing standing); *Suhre*, 131 F.3d at 1084 (exposure to Ten Commandments on city courtroom wall conveyed standing); *Freedom from Religion Found. v. Cnty. of Lehigh*, 933 F.3d 275 (3d Cir. 2019) (exposure to Latin cross on county seal conveyed standing, even though the seal was found not to violate the Establishment Clause); *Felix v. City of Bloomfield*, 841 F.3d 848, 854 (10th Cir. 2016) (exposure to Ten Commandments on lawn of municipal building conveyed standing). *But see Am. Legion*, 139 S. Ct. at 2098 (2019) (Gorsuch, J. concurring) (arguing that "offended observer" standing is unfounded in law). K.M. did not encounter a memorial or passive form of religious government expression, but a prayer led by a government agent during their official duties. This is far more like the school graduation in

Lee v. Weisman, 505 U.S. 577 (1992), or the prayers before football games in *Santa Fe Indep. Sch Dist. v. Doe*, 530 U.S. 290 (2000). The *Santa Fe* court recognized that some students, such as football team members, are mandated to attend games, but even for those students whose attendance was not mandatory a pre-game prayer violated the Establishment Clause because it coerced "those present to participate in an act of religious worship." *Santa Fe*, 530 U.S. at 312.

Limiting Establishment Clause claims to mandatory exposure cases is an unworkable standard. Requiring nonobserving individuals to avoid religious government messages wherever possible works two additional, related harms. First, it risks making religious minorities second class citizens by depriving them of the use of government resources and facilities. *Saladin v. City of Milledgeville*, 812 F.2d 687, 692–93 (11th Cir. 1987). Requiring religious minorities to avoid government assistance and resources in order to avoid unwanted exposure to religious government speech is a "Hobson's Choice" and an unacceptable interpretation of the First Amendment. *Doe ex. Rel. Doe v. Beaumont Indep. Sch. Dist.*, 173 F.3d 274, 285 (5th Cir. 1999), *on reh'g en banc sub nom*. *Doe v. Beaumont Indep. Sch. Dist.*, 240 F.3d 462 (5th Cir. 2001). Second, requiring nonobserving or religious minorities to change their behavior in order to gain standing—since they could then show an injury beyond exposure—would place potential plaintiffs in the position of mooting their own cases. For example, in *Bell v. Little Axe Independent School District*, 766 F.2d 1391 (10th Cir. 1985), parents of public-school children who had taken steps to remove their children from a school district allegedly violating the Establishment Clause had to face arguments that their self-help had rendered their claims moot. *Id*. at 1399. Because of these related issues, the voluntariness of exposure to government religious speech cannot diminish a potential plaintiff's standing to sue.

iii. K.M. was directly exposed to West Canaan's religious message by their agent-led prayer before school football games

K.M.'s allegations carry all the indicia of direct, personal harm recognized in Establishment Clause jurisprudence. Coach Kilmer conducted a religious exercise at the beginning of football games for a public school. R. at 1. All members of the football team were in attendance. R. at 1. K.M. is a member of the football team. R. at 2. K.M. is an agnostic who does not ascribe to religious beliefs. R. at 2. K.M. was not comfortable with the display and participation therein. R. at 2. This alone caused K.M. injury sufficient to maintain standing.

Beyond mere exposure, K.M. was directly confronted with religious government speech and was instructed to participate. K.M. indicated his discomfort to Coach Kilmer. R. at 2. Coach Kilmer continued his display and indicated K.M. was expected to participate. R. at 2. K.M. was criticized and negatively affected by his lack of participation. R. at 2. West Canaan declined to address the issue even after multiple parents complained. R. at 2, 5.

Because of Coach Kilmer's actions, K.M. is denied an equal opportunity to fully participate in the football team. The football team's status as an extracurricular activity does not alleviate the injury. *See Santa Fe*, 530 U.S. at 310 (applying Establishment Clause prohibition to prayers spoken at football games). This denial works a real harm on K.M., and accompanies the spiritual, value-laden harm done any time a government institution participates in the selective establishment of religion. *Rabun Cnty.*, 698 F.2d at 1102.

B. Even if K.M.'s Direct and Unwanted Exposure Is Insufficient to Convey Standing, West Canaan's Coercion by and Through Coach Kilmer Constitutes an Injury in Fact

"It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise[.]" *Weisman*, 505 U.S. at 587. Even if K.M.'s exposure to West Canann's religious messages does not constitute an

injury on its own, those messages violate this indisputable guarantee. K.M. need not establish for the purposes of standing that he was coerced by West Canaan, only that the actions of West Canaan could be seen as coercive. *See Ass'n of Data Processing*, 397 U.S. at 153 (distinguishing between merit and standing arguments). The facts here are sufficiently analogous to those in *Lee v. Weisman* and *Santa Fe Independent School District v. Doe* to show that Coach Kilmer's actions should be seen as coercive.

i. Government coercion by religious messages is sufficient to establish standing

While not necessary to proffer an Establishment Clause claim, alleging government coercion is sufficient to do so. *Weisman*, 505 U.S. at 604 (Blackmun, J. concurring). Schools are subject to "heightened concerns" of coercion. *Id.* at 591. The coercive force need not be direct—indirect social pressure is as prohibited as direct enactments of law. *Santa Fe*, 530 U.S. at 312 (citing *Weisman*, 505 U.S. at 594); *see also Engel*, 370 U.S. at 431 ("When the power, prestige, and financial support of government is placed behind a particular religious belief, the indirect coercive pressure . . . is plain."); *Marsh*, 463 U.S. at 803 (Brennan, J. dissenting) ("The right to conscience, in the religious sphere, is not only implicated when the government engaged in direct or indirect coercion.").

For these reasons, government sponsored prayer in public schools causes injury to every student who encounters it. *See Am. Legion*, 139 S. Ct. at 2089 (Kavanaugh, J. concurring) ("[G]overnment-sponsored prayer in public schools pose[s] a risk of coercion of students." (citing *Schempp*, 374 U.S. at 307 (Goldberg, J., concurring))); *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987); *Bd. of Educ. of Westside Cnty. Schs. (Dist. 66) v. Mergens*, 496 U.S. 226, 261–62 (1990) (KENNEDY, J., concurring). This is true regardless of whether participation is mandatory or

voluntary. *Compare Schempp*, 374 U.S. at 205 (finding standing for students subjected to reading of bible verses at the start of each school day), *with Santa Fe*, 530 U.S. at 310 (finding standing for students subjected to school-sponsored prayer at a school football game).

ii. K.M. has properly alleged coercion by the government in religious messaging

K.M. was subjected to coercion beyond that experienced by students in *Santa Fe Independent School District v. Doe*. In *Santa Fe*, the court recognized that football team members have seasonal commitments that mandate their attendance at otherwise extracurricular activities. *Santa Fe*, 530 U.S. at 311. Even so, *all* students in attendance were subject to coercive pressure—not just the team members. *Id.* Here, K.M. was a member of the team: obligated to attend games and be present in the pre-game locker room prayer. R. at 1–2. Coach Kilmer's actions were even more coercive than mere recitation. Coach Kilmer indicated to K.M. that it would not be fair to the participating players for K.M. to abstain, and that team unity would suffer if he did so. R. at 2. Whereas in *Santa Fe Independent School District v. Doe* and in *Lee v. Weisman*, the concern was that a nonbeliever or dissenter would view the school's actions as enforcing religious orthodoxy, here there is a direct attempt by Coach Kilmer to enforce participation in religious exercise. The School District, even when notified of the practice, has done and will do nothing to rectify their employee's behavior. R. at 2. K.M. has experienced negative repercussions from his choice not to participate in the pre-game prayer. R. at 2. The Constitution cannot permit West Canaan and Coach Kilmer to "exact religious conformity from a student as the price" of joining the school football team. *Santa Fe*, 530 U.S. at 312.

The connection between the religious speech and government action is stronger here than in *Santa Fe Independent School District*. There, students democratically voted to have invocations

spoken at the beginning of football games by a student selected in the same manner. These "circuit breaker" mechanisms did not save the speech from its coercive force or render it Constitutional. *Id.* at 310. Coach Kilmer is not a student, and his invocation is not chosen democratically. He leads the prayer, which he chooses. R. at 1. Because he is an employee of a publicly funded school district, Coach Kilmer is an agent of the government and speaks on behalf of West Canaan to his team. R. at 1–2. The government-sponsored nature of the speech is therefore even more pronounced than in *Santa Fe*, and as alleged certainly confers an injury in fact on K.M. This coercion constitutes the forced participation that even the dissent below acknowledges conveys standing. *See* R. at 14 ("Had her son been forced to participate in Coach Kilmer's prayer . . . that might well give rise to a separate claim[.]").

C. Establishment Clause Cases Permit Standing for Non-Economic Injuries Which May Not Suffice for Standing in Other Contexts

Because standing doctrine attempts to limit federal court action to "Cases" or "Controversies," the inquiry is "tailored to reflect the kind of injuries" plaintiffs are likely to suffer. *See Suhre*, 131 F.3d at 1086 (discussing Establishment Clause standing and injuries). Unlike Tort or Contracts injuries, which are to economic or physical well-being, Establishment Clause injuries can be "particularly elusive" by their nature. *Id.* at 1085 (collecting cases). Because of this, the Religion Clauses of the constitution are an "extraordinarily sensitive" area of constitutional law and should be viewed in a different light. *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971). The Establishment Clause was intended to avoid political tyranny and subversion of civil authority and the establishment of religion is viewed more broadly than merely protecting freedom of religious expression. *McGowan v. Maryland*, 366 U.S. 420, 430 (1961) (discussing the writings of Madison). The ultimate goal of the Establishment Clause is to foster a society in which "people of all beliefs can live together harmoniously." *Am. Legion*, 139 S. Ct at 2074. When evaluating

Establishment Clause injuries, we should view as such anything that harms the ability to live harmoniously in society.

In many ways, Establishment Clause standing is viewed more leniently than in other areas of law. Establishment Clause injuries are often "to the feelings alone." *Cooper v. U.S. Postal Serv.*, 577 F.3d 479, 489 (2d Cir. 2009). Because of the lack of physical or pecuniary injuries, courts inquire as to the "spiritual, value-laden beliefs" of the plaintiffs that may be harmed. *Suhre*, 131 F.3d at 1087. While these more psychological injuries may not confer standing in other arena, this Court has recognized its importance. *See generally, Engel*, 370 U.S. at 430, *Santa Fe*, 530 U.S. 290. The Court is ever vigilant to combat the "myriad, subtle ways in which Establishment Clause values can be eroded." *Santa Fe*, 530 U.S. at 313–14. Perhaps the most obvious example of relaxed standing requirements is in *Flast v. Cohen*, 392 U.S. 83 (1968). Taxpayer standing is generally disfavored by this Court because of its connection to more generalized grievances rather than individual harms. *See, e.g., Allen v. Wright*, 468 U.S. 737 (1984). However, in *Flast* the Court recognized the purpose of the Establishment Clause was to avoid just the same generalized grievances, and so permitted the suit to continue. *Flast*, 392 U.S. at 102–05. The *Engel* Court explicitly noted that Establishment Clause claims required less than Free Exercise claims. *Engel*, 370 U.S. at 430 (noting the Free Exercise Clause requires a showing of direct governmental compulsion whereas the Establishment Clause does not).

The fact the challenged activity occurred in a school setting militates to more skepticism and more lenient standing requirements. The mandatory nature of schools lends extra force to their exercise of the authority of the State. *Weisman*, 505 U.S. at 592. Because of this force, there are "heightened concerns" with protecting "freedom of conscience" in school. *Id.* (citing *Schempp*,

374 U.S. at 307 (1963) (Goldberg, J., concurring); *see also Aguillard*, 482 U.S. at 584, *Mergens*, 496 U.S. at 261–62 (KENNEDY, J., concurring)).

The dissent below relies heavily on Justice Gorsuch's concurrence in *American Legion v. American Humanist Association* to determine that *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2019), has ended "offended observer" standing. R. at 13–14. This misreads both Gorsuch's concurrence and this Court's jurisprudence. In *American Legion*, the injury alleged was exposure to a memorial in the form of a Latin cross. *Am. Legion*, 139 S. Ct. at 2098 (Gorsuch, J. concurring). The memorial was out of the way, and the plaintiffs did not allege a direct and unwelcome exposure like K.M. *Id.* at 2079. Justice Gorsuch's concern with complaints closer to a heckler's veto than a personalized injury is not relevant here. As explained above, K.M. was directly confronted with religious government messages in a forum he was obligated to attend. R. at 1–2. The proximity to government religious expression renders K.M. more than a mere "offended observer," as even Justice Gorsuch would recognize. *Am. Legion*, 139 S. Ct. at 2102 (Gorsuch, J. concurring) ("[A] public school student compelled to recite a prayer will still have standing to sue.").

Bremerton was likewise not an Establishment Clause case: Coach Kennedy's actions were vindicated under the Free Exercise Clause, and the actions were ruled to be private speech. *See Bremerton*, 142 S. Ct. at 2424. The decision cannot be read to change Establishment Clause standing requirements, and this Court should decline the invitation to do so. Even if *Bremerton* removed "offended observer" standing as the dissent below suggests, R. at 14, K.M. was still directly subjected to government speech in a manner that he could not avoid. K.M.'s position is not that of an observer, but a student coerced or compelled to recite a prayer. Given the concerns the Establishment Clause is meant to address, who else would have standing to contest West

Canaan's religious messaging? If the Establishment Clause merely prohibits actual compulsion, it protects nothing more than the Free Exercise Clause—and it has long been established that "[I]t cannot be presumed that any clause in the constitution is intended to be without effect." *Marbury v. Madison*, 5 U.S. 137, 174 (1803).

II. [REDACTED]

CONCLUSION

[REDACTED]